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Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted in accordance with Assembly resolution 67/168.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Summary

In the present report, the Special Rapporteur provides an overview of his activities and considers four topics relating to the protection of the right to life: (a) the role of regional human rights systems; (b) less lethal and unmanned weapons in law enforcement; (c) resumptions of the death penalty; and (d) the role of statistical indicators.

I. Introduction

1. The present report provides an overview of the activities carried out by the Special Rapporteur since the submission of his previous report to the General Assembly (A/68/382 and Corr.1). In sections III to VI, he focuses on four topics relating to the protection of the right to life: (a) the role of regional human rights systems; (b) less lethal and unmanned weapons in law enforcement; (c) resumptions in the application of the death penalty; and (d) statistical indicators.[1]

II. Activities of the Special Rapporteur

2. The activities carried out by the Special Rapporteur during the period from 28 July 2013 to 27 February 2014 are outlined in his report to the Human Rights Council at its twenty-sixth session (A/HRC/26/36). In the thematic section of that report, the Special Rapporteur focused on domestic legal provisions regulating the use of force.

A. International and national meetings

3. From 26 to 28 March 2014, the Special Rapporteur participated in a meeting on autonomous weapons systems, organized in Geneva by the International Committee of the Red Cross.

4. On 15 April, he made a presentation on autonomous weapons systems at the Faculty of Law of the University of Cape Town, South Africa.

5. From 27 to 29 April, he attended the fifty-fifth session of the African Commission on Human and Peoples' Rights, held in Luanda.

6. From 13 to 16 May, he delivered a statement at an informal expert meeting convened in Geneva at the request of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects.

7. On 19 and 20 May, he participated in a meeting of experts on the weaponization of increasingly autonomous technologies, held in Geneva.

8. On 10 June, he participated in a side event organized by Amnesty International on human rights implications of lethal and less lethal autonomous weapons systems, held in Geneva.

9. On 11 June, he participated in a side event on human rights, disarmament and killer robots, organized in Geneva by the Campaign to Stop Killer Robots.

10. On 13 June, he participated in a side event on police use of force and human rights protections in social protests, organized in Geneva by the Centre for Social and Legal Studies.

[1] Thomas Probert of the Institute for International and Comparative Law in Africa, University of Pretoria, and the Centre of Governance and Human Rights, University of Cambridge, provided invaluable research assistance in the preparation of the present report.

11. On 19 June, he spoke at the launch of *Unlawful Killings in Africa*, a report published by the Centre of Governance and Human Rights, and delivered a public lecture on the theme "Autonomous weapon systems: the future?" at the University of Cambridge, United Kingdom of Great Britain and Northern Ireland.

12. From 2 to 4 July, he spoke on regional perspectives of the death penalty at the Continental Conference on the Death Penalty, organized in Cotonou by the African Commission on Human and Peoples' Rights in cooperation with the Government of Benin.

13. On 14 and 15 July, the Special Rapporteur participated in an expert seminar on the duty to investigate after attacks in situations of armed conflict and armed violence, organized in Lucens, Switzerland, by the Geneva Academy of International Humanitarian Law and Human Rights.

14. On 22 July, he presented a paper on autonomous weapons systems at Oxford University, United Kingdom.

B. Visits

15. The Special Rapporteur visited Papua New Guinea from 3 to 14 March 2014, at the invitation of the Government. His report on that visit will be submitted to the Human Rights Council in 2014.

16. Since the submission of his previous report to the General Assembly, the Special Rapporteur has sent requests for visits to the Governments of Rwanda, Ukraine and Yemen. He expresses his thanks to the Governments of the Gambia, Iraq and Yemen, which have responded positively to his requests, and encourages the Governments of Egypt, Iran (Islamic Republic of), Madagascar, Pakistan and Sri Lanka to accept his pending requests.

III. Regional human rights systems as entry points for the right to life

17. It is an ongoing concern of the mandate holder to place the right to life more squarely on the agenda of international human rights bodies, domestic mechanisms (such as courts and national human rights institutions) and of those who access them (individuals, non-governmental organizations and others). The system is a holistic unit, with each component playing a vital role. Highlighted in the present section is the important role that regional systems play in both dimensions of the right to life — prevention and accountability — with encouragement given to the increased use of the opportunities, or entry points, that they present in this regard.

18. Regional systems are in many cases closer to the people concerned than the global system and, as such, have a unique ability to facilitate greater participation in the international system and to foster its legitimacy. The universality of human rights cannot mean only that all people from all parts of the world are held to the same standards; universality also requires that people from all parts of the world have a role to play in determining what those standards are in the first place.

19. Special focus will be placed on the important, although often less well-known, role that emerging regional or subregional systems can play in this context. Only

references for directly cited sources are provided; other references are available on the websites of the respective mechanisms.

A. Africa

African Union

20. The right to life is set out in article 4 of the African Charter on Human and Peoples' Rights (African Charter), article 4 of the Protocol to the African Charter on the Rights of Women in Africa and article 5 of the African Charter on the Rights and Welfare of the Child.

21. According to the African Commission on Human and Peoples' Rights, the right to life is "the fulcrum of all other rights" and "the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State".[2] It has addressed the right to life through resolutions, in the consideration of the reports of States, by creating special procedures, in country visits and through its case law.

22. With regard to the death penalty, the African Commission in 1999 and 2008 adopted resolutions urging States to, respectively, envisage and observe a moratorium on the execution of death sentences with a view to abolishing the death penalty. In its case law, the Commission has found violations of the right to life when a person is executed after an unfair trial. Although the Commission did not make a clear ruling against the death penalty in *Bosch*, it did emphasize the global trend towards abolition of the death penalty.[3] More recently, the Commission is in the process of adopting an optional protocol on the abolition of the death penalty in Africa, with support from civil society.

23. With regard to use of force, the African Commission has noted that lethal force must be subject to independent and public scrutiny[4] and has generally followed the United Nations guidelines in this area.[5]

24. In *Kazingachire*, the Commission held that it was only "under closely defined circumstances [where] one life may be taken as a last resort in order to protect another life or lives".[6] The Commission has found violations of the right to life in relation to killings of alleged criminals, political opponents, ethnic minorities and striking workers. In *Aminu*, the Commission found a violation of the right to life in relation to death threats, noting that it would be a narrow interpretation of this right to think that it can only be violated when one is deprived of it.[7]

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[2] African Commission on Human and Peoples' Rights, communication No. 288/04, *Gabriel Shumba* v. *Zimbabwe*, 2012, para. 130.

[3] African Commission on Human and Peoples' Rights, communication No. 240/01, *Interights and Others (on behalf of Mariette Sonjaleen Bosch)* v. *Botswana*, 2003, para. 52.

[4] *Gabriel Shumba* v. *Zimbabwe*, para. 136. See also African Commission on Human and Peoples' Rights, communication No. 279/03-296/05, *Sudan Human Rights Organization and Centre on Housing Rights and Evictions* v. *Sudan*, 2009, para. 147.

[5] African Commission on Human and Peoples' Rights, communication No. 295/04, *Noah Kazingachire and Others (represented by Zimbabwe Human Rights NGO Forum)* v. *Zimbabwe*, 2012, paras. 96 and 110.

[6] Ibid., para. 122.

[7] Ibid., communication No. 205/97, *Kazeem Aminu* v. *Nigeria*, 2000, para. 18.

25. In the context of a civil war, the African Commission has gone as far as holding the State liable for not providing security and stability, resulting in violations of the right to life.[8] The African Court on Human and Peoples' Rights has adopted provisional measures in a case against Libya concerning imminent threats to the right to life in the context of armed conflict.

26. According to the African Commission, investigations of alleged extrajudicial executions "must be carried out by entirely independent individuals, provided with the necessary resources, and their findings should be made public and prosecutions initiated in accordance with the information uncovered".[9]

27. In one of its first merits judgements, the African Court on Human and Peoples' Rights in March 2014 found that Burkina Faso had failed to act with due diligence in seeking, trying and judging the assassins of journalist Norbert Zongo and his companions.[10]

28. Recent resolutions adopted by the African Commission of relevance to the right to life include those on summary execution and enforced disappearance in Mali (2013), police and human rights in Africa (2013), the right to peaceful demonstrations (2014) and the violation of the right to life by terrorist groups in Africa (2014).

29. The Commission established a working group on the death penalty, which produced a study on the question of the death penalty in Africa.[11] In 2012, its mandate was expanded, and it became known as the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa. This active and engaged Working Group has begun a practice of adopting intersessional reports on the right to life[12] and has recently embarked on an important process to adopt a general comment on the right to life.

30. Members of the African Commission have raised right-to-life concerns during the consideration of the reports of States, a process similar to the United Nations treaty bodies. Right-to-life issues have also been addressed by other special mechanisms of the Commission, such as the Special Rapporteur on Prisons and Conditions of Detention. The Commission recently adopted guidelines concerning the condition of arrest, police custody and pretrial detention in Africa; in article 20 of the guidelines, it is emphasized that, given the control exercised over persons in custody, the State must give a satisfactory explanation for any death or serious injury to a person deprived of their liberty.

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[8] Ibid., communication No. 74/92, *Commission Nationale des Droits de l'Homme et des Libertés* v. *Chad*, 1995. See also African Commission on Human and Peoples' Rights, communications Nos. 48/90, 50/91, 52/91 and 89/93, *Amnesty International and Others* v. *Sudan*, 1999.

[9] *Amnesty International and Others* v. *Sudan*, para. 51.

[10] African Court on Human and Peoples' Rights, *Norbert Zongo and Others* v. *Burkina Faso*, application No. 013/2011, judgement of 28 March 2014.

[11] Available from www.achpr.org/files/news/2012/04/d46/study_question_deathpenalty_africa_2012_eng.pdf.

[12] See part 3 of the intersessional activity report of the Working Group, available from www.achpr.org/sessions/55th/intersession-activity-reports/death-penalty/.

Subregional initiatives

31. The International Conference on the Great Lakes Region is governed by the Pact on Security, Stability and Development in the Great Lakes Region. The right to life is explicitly recognized in its Protocol on the Protection of and Assistance to Internally Displaced Persons and implied in other protocols, such as the Protocol for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and All Forms of Discrimination.

32. The Legislative Assembly of the East African Community has adopted a bill of rights for the Community, in which the right to life is recognized.[13]

33. The Community Court of Justice of the Economic Community of West African States may hear cases alleging violations of the African Charter. In *Hassan*, it dealt with accountability for extrajudicial executions by armed gangs supported by the one of the state governments.[14] In 2014, the Court addressed both the death penalty[15] and compensation for failure to investigate the death of a journalist.[16]

B. Americas

Organization of American States

34. Article 4, paragraph 1, of the American Convention on Human Rights provides that "every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life". Limitations on the death penalty are set out in paragraphs 2 to 6 of the article. According to article 27, paragraph 2, States may not derogate from article 4. The Protocol to the Convention, on abolishing the death penalty, has been ratified by 13 States.

35. States members of the Organization of American States that are not party to the Convention are bound by the American Declaration of the Rights and Duties of Man, article 1 of which provides for the right to life. The right to life is also established in article 4 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

36. In 1983, the Inter-American Court of Human Rights observed in paragraph 55 of its advisory opinion OC-3/83 that the imposition of the death penalty in retentionist States must strictly meet international procedural standards, must be restricted to the most serious crimes, and that the personal circumstance of the defendant must be taken into account. It held that the death penalty may be imposed only for the most serious crimes resulting in the loss of life.

37. Deadly use of force requires legality, absolute necessity and proportionality. In cases on the use of lethal force by security agents, the Inter-American Court has referred both to the case law of the European Court of Human Rights and to the United Nations standards. State agents may use deadly force only against persons

[13] See http://federation.eac.int/index.php?option=com_docman&task=cat_view&gid=38&Itemid=136.

[14] Suit ECW/CCJ/APP/03/10, judgement of 15 March 2012.

[15] See www.worldcoalition.org/nigeria-ecowas-court-death-penalty-human-rights-minor-appeal.html.

[16] See http://cpj.org/2014/06/ecowas-court-rules-gambia-failed-to-investigate-jo.php#more.

who constitute an immediate, deadly threat and must ensure that others are not killed in the process.[17] When its agents use deadly force, the State has the burden to prove that their action was justified.

38. The Inter-American Court has held that the State must take preventive measures to avert violence within prisons rather than use deadly force. The Court has in a number of cases noted the connection between forced disappearances and the right to life, noting that disappearance often implies the secret execution of prisoners.

39. According to the Inter-American Court, the right to life is a prerequisite for all other rights and may not be narrowly interpreted. States must establish the conditions necessary to prevent violations of the right to life, both by their officials and by private individuals, including through legislation and effective institutions to investigate, punish and redress deprivation of life.[18] The Court has held that an illegitimate act when committed by a non-State actor can lead to the international responsibility of the State, not in the light of the act itself, but because of the failure to prevent or respond to it effectively. The obligation of the authorities to take preventive measures is conditioned by their awareness of a situation of a real and immediate danger to a specific individual or group of individuals and to the reasonable possibility of preventing or avoiding that risk.

40. The Inter-American Commission has 10 thematic rapporteurs. Both they and the Commission issue press releases regarding violations of the right to life that fall within their mandates. The Commission has produced various thematic reports on the right to life, including its 2011 report on the death penalty, its 2005 study on the murder of journalists and its country reports.[19]

41. Under article 25 of its rules of procedure, the Inter-American Commission may adopt precautionary measures in serious and urgent situations presenting a risk of irreparable harm to persons. The Commission may request provisional measures from the Inter-American Court. With regard to the right to life, precautionary or provisional measures have been used in relation to the death penalty, protection of persons who have been assaulted, threatened or disappeared or who belong to groups whose members have been killed.

42. In preparing its reports, the Inter-American Commission may, in accordance with article 59 of its rules of procedure, use reliable and credible information provided by civil society organizations. Pursuant to article 66 of the rules, such organizations may also request that the Commission hold country-specific or thematic hearings. Hearings held in relation to the right to life include those on citizen security, the death penalty and human rights defenders.[20]

Subregional initiatives

43. Article 19 of the Andean Charter for the Promotion and Protection of Human Rights (A/C.3/57/2, annex) provides that member States shall protect the right to

[17] Inter-American Court of Human Rights, *Zambrano Vélez and Others* v. *Ecuador*, judgement of 4 July 2007, para. 85.

[18] Ibid., *Montero-Aranguen and Others* v. *Venezuela*, judgement of 5 July 2006, para. 66.

[19] See www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf and www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf.

[20] See www.oas.org/es/cidh/audiencias/topics.aspx?lang=en.

life in line with the International Covenant on Civil and Political Rights, other international instruments and national constitutions. The Charter does not establish a monitoring mechanism but sets out that member States should cooperate with international monitoring bodies.

44. The MERCOSUR Institute of Public Policies on Human Rights (www.ippdh.mercosur.int) has a mandate that includes research, technical support and coordination of human rights policies. Themes include citizen security and the prevention of institutional violence.

C. Europe

Council of Europe

45. The right to life is provided for in article 2 of the European Convention on Human Rights, which sets out the circumstances — subsequently elaborated by the Court — under which intentional deprivation of life is allowed.

46. The death penalty has been abolished in all States members of the Council of Europe, in line with Protocols 6 and 13.[21]

47. With regard to the use of force, the European Court has relied strongly on United Nations standards and has made a major contribution towards the development of the jurisprudence in this area as far as the prevention of violations and the need for accountability are concerned. This case law[22] is well known and will not be repeated here except to emphasize the importance of the notion of precaution and prevention as part of the protection of the right to life, which deserves attention in other systems as well.[23]

48. The Council of Europe Commissioner for Human Rights undertakes country visits and publishes country-specific and thematic reports. The Parliamentary Assembly of the Council addresses human rights issues, among others, through the adoption of resolutions.

European Union

49. Article 2, paragraph 1, of the Fundamental Rights Charter of the European Union, which is part of the Treaty on the European Union, provides that everyone has the right to life. According to paragraph 2 of the same article, the death penalty may not be imposed or executed.

50. The European Union Agency for Fundamental Rights (http://fra.europa.eu/en) provides research and advice to member States on the implementation of human rights within the Union.

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[21] The Russian Federation has not abolished the death penalty in law but the penalty has not been applied since 1999, following the decision of the Constitutional Court to impose a moratorium.

[22] See http://www.echr.coe.int/Pages/home.aspx?p=home.

[23] See, for example, European Court of Human Rights, *McCann and Others* v. *the United Kingdom*, application No.18984/91, 27 September 1995, paras. 202-213.

D. Other regional mechanisms

Organization for Security and Cooperation in Europe

51. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (www.osce.org/odihr) produces reports and guidelines on various themes. Those of relevance to the right to life include the widely used *Guidelines on Freedom of Peaceful Assembly*.[24]

Association of Southeast Asian Nations

52. Article 11 of the Human Rights Declaration of the Association of Southeast Asian Nations (ASEAN) provides for the right to life. The limitation clause that "no person shall be deprived of life save in accordance with law" is overly broad, and the ASEAN Intergovernmental Commission on Human Rights should establish constraints on how it should be interpreted.[25] The terms of reference of the Commission, which provide that it should consult civil society, are currently under revision. The Commission has set itself the task of developing in 2015 a thematic study on the right to life, with particular attention to a moratorium on the death penalty in the ASEAN region; an important development that has much potential.

League of Arab States

53. The seven-member Arab Human Rights Committee established under the Arab Charter considers State reports and adopts concluding observations. The draft statute of the Arab Court of Human Rights has been criticized by civil society organizations because only States would be able to submit cases to the court.[26]

Organization of Islamic Cooperation

54. The Cairo Declaration on Human Rights in Islam provides, in its article 2, that the right to life must be protected and may be taken only in accordance with sharia law.

E. Conclusion

55. **The regional system for the protection of human rights forms an important, if often underutilized, part of the global protection of the right to life.**

56. **Regional human rights systems are well placed to engage with States about right-to-life issues and should seek to secure this right as a priority. Likewise, regional systems offer multiple entry points that should be used by civil society to ensure realization of the right to life, ranging from lodging individual communications and requesting precautionary or interim measures, to**

[24] Available from www.osce.org/odihr/73405.

[25] Office of the United Nations High Commissioner for Human Rights, news release, "Pillay encourages ASEAN to ensure Human Rights Declaration is implemented in accordance with international obligations". Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12809&LangID=E.

[26] See www.fidh.org/en/north-africa-middle-east/league-of-arab-states/15489-proposed-arab-court-of-human-rights-an-empty-vessel-without-substantial.

presenting shadow reports in the case of the African system and participating in the development of thematic studies on the right to life in the African and ASEAN systems.

57. One example of an area in which regional systems can potentially play a stronger role relates to whether domestic laws and practices of States concerning the use of force by law enforcement officials comply with international standards. In my report to the Human Rights Council in June 2014 (A/HRC/26/36), I emphasized the need for reform in this area. I also offered to facilitate technical assistance to States wishing to reform those laws, and wish to reiterate that offer, including by working with regional systems.[27]

58. The United Nations has a strong interest in working with and supporting the regional human rights systems.[28] Greater cooperation between the special mechanisms of the United Nations and those of the African Commission on Human and Peoples' Rights was given a tangible agenda by the road map adopted in Addis Ababa in January 2012.[29]

F. Recommendations

59. The United Nations should continue to seek ways to engage with and support the work of the regional human rights systems.

60. Each regional system should audit its own practices and priorities to establish where it can increase its engagement and impact concerning the right to life. Regional systems should also learn from one another in this regard.

61. It is incumbent on all mechanisms involved in interpreting and applying the right to life in specific cases, including the regional systems, to take cognizance of developments elsewhere in this area in order to ensure coherence worldwide.

62. Regional systems in areas in which the death penalty continues to be practised should challenge this on the basis of the right to life, the right to dignity and the right to freedom from cruel, inhuman or degrading treatment or punishment.

63. Regional systems should scrutinize the domestic laws and practices of States with regard to the use of force during law enforcement to establish whether such laws and practices are in conformity with international standards.

64. Civil society should use all the mechanisms available within regional systems to ensure that the issues relating to the right to life receive continuous attention and remain central to the respective agendas.

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[27] For ease of reference, many of the laws are available from www.icla.up.ac.za/un/use-of-force.

[28] See www.ohchr.org/EN/Countries/NHRI/Pages/Cooperation.aspx.

[29] Available from www.ohchr.org/Documents/HRBodies/SP/SP_UNHRC_ACHPRRoad%20Map.pdf. See also the report on the review of the road map, available from www.ohchr.org/Documents/HRBodies/SP/OutcomeReviewAARoadmap_EN.doc.

IV. Use of less lethal and unmanned weapons in law enforcement

65. The use of force against the human person, including the use of deadly or potentially deadly force by agents of the State, is a central human rights concern. Recent years have seen a significant development in the technology available to law enforcement officials and to non-State actors such as private security companies. Industries have developed around those weapons and market forces are often significant drivers in their availability, functions and use.

66. Two problems raised by these new developments are discussed below: the sometimes lethal or otherwise serious effects of so-called less lethal weapons; and the possibilities that increasing depersonalization of the use of force — through unmanned force delivery technologies — may infringe upon human rights standards.

67. It is an underlying theme of the present section — and indeed of much of my work as Special Rapporteur — that, to the extent that the current, often astounding, advances in technology give States and others who use them the ability better to moderate and monitor the use of force, they come with heightened responsibility. The availability of advanced technology implies higher levels of obligation regarding the decisions on whether and how much force to use, and also accountability and monitoring with regard to the exercise of that discretion.

68. Consideration should be given to the question of whether the international trade in such devices needs to be controlled in addition to the requirements of the Arms Trade Treaty, and be subject to export control licensing.

A. Lethal potential of "less lethal" weapons

69. Principles 2, 4 and 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that, where force is necessary, graduated force should as far as possible be used.[30] In this context, less lethal weapons may in some cases provide officials with less dangerous options than the use of firearms and thus may save lives. The availability of such weapons implies that law enforcement officials should, where appropriate, use them. However, while less lethal weapons should, in general, be welcomed, it must be remembered that almost any use of force against the human person can under certain circumstances lead to loss of life or serious injury.[31]

70. An increasing number of detailed reports by human rights organizations document how protesters and bystanders have been wounded and sometimes died following the use by police and security personnel of rubber-coated metal bullets,[32]

[30] See also A/HRC/26/36, paras. 59, 69, 102 and 139; A/61/311, paras. 33-45; A/HRC/14/24, paras. 33-37; and A/68/382 and Corr.1, paras. 33-37.

[31] See, generally, Abi Dymond and Neil Corney, "The use of 'less lethal' weapons in law enforcement", in Stuart Casey-Maslan, ed., *Weapons Under International Law* (New York, Cambridge University Press, 2014).

[32] See, for example, Amnesty International, *Trigger-happy: Israel's Use of Excessive Force in the West Bank*, 27 February 2014.

the reckless use of tear gas,[33] electric shock projectiles,[34] rubber ball projectiles,[35] plastic bullets and water cannons.[36]

71. Deadly consequences could also occur because of the use of such weapons in confined spaces, for example where tear gas accumulates or leads to stampedes.[37]

72. Moreover, the requirement under human rights law is not merely to distinguish between lethal and any non-lethal force. Even if it is unlikely to lead to death, the force used must still be the minimum required by the circumstances of each case. The danger is that law enforcement officials may argue that the weapons that they use are labelled "less lethal" and then fail to assess whether the level of force is not beyond that required.

73. While there is a high level of agreement on the international standards applicable to the use of force during law enforcement, the increasingly advanced technology requires a more detailed regulatory framework. A process involving States and the international community, in addition to civil society, is needed to set out how the standards set by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the relevant jurisprudence should be applied to the scenarios created by the new technology.

74. Of particular importance are precautionary measures, such as appropriate training to use increasingly sophisticated weapons. I have argued elsewhere that precaution is an often overlooked but crucially important component of the protection of the right to life (A/HRC/26/36, paras. 63 and 64). It is bound to grow in importance as technology develops further. In addition to general training on the Basic Principles, law enforcement officials should undergo training on each type of device with which they have been issued and the standards mentioned above. In some instances, licences for specific devices may be required.

75. Minimum standards need to be set for the development of weapons and their use, and good practices need to be identified. A few examples of areas in which more specificity may be required are: the accuracy required of a projectile; how much kinetic force may be delivered to a human body; the amount of electricity that could be used; and the safe levels of a chemical irritant to be delivered by an aerosol spray. The same applies to where such devices could be used (e.g. tear gas grenades should not be used in closed spaces, and tasers should not be used when people are standing on walls). The new technologies may require that monitoring of force is mandatory in many cases.

76. It may be necessary to require selection and testing of law enforcement weapons to be carried out in each State by a legally constituted, independent,

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[33] Physicians for Human Rights, *Weaponizing Tear Gas: Bahrain's Unprecedented Use of Toxic Chemicals Agents against Civilians* (August 2012). Available from http://physiciansforhumanrights.org/library/reports/weaponizing-tear-gas.html.

[34] Amnesty International, *USA: "Less than lethal"? The Use of Stun Weapons in US Law Enforcement*, 16 December 2008. Available from www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf.

[35] Amnesty International, *Spain: The Right to Protest under Threat*, 24 April 2014. Available from http://www.amnesty.org/en/library/asset/EUR41/001/2014/en/019b583d-9f93-484f-b7e0-e499126e2ebc/eur410012014en.pdf.

[36] Human Rights Watch, "Turkey: a weekend of police abuse", 18 June 2013. Available from http://www.refworld.org/docid/51c949a34.html.

[37] See, for example, http://f24.my/1gsH4Qm.

multidisciplinary and transparent panel of experts, free of direct commercial or law enforcement interests. The system as a whole — the weapon, ammunition, sighting device and guidelines for use — should be tested in real situations (e.g. in the dark or while wearing riot gear).

B. Increased depersonalization of the use of force through unmanned systems

77. On the battlefield, the depersonalization of force against human beings has manifested itself in unmanned systems that are remotely controlled by humans, as is the case with armed drones. The use of such weapons during armed conflict is not inherently unlawful, but there are serious concerns about their use (see A/68/382 and Corr.1, para. 13, and A/68/389, para. 20).

78. There is now also an increased availability of unmanned systems — often labelled as less lethal — aimed at law enforcement and at non-State actors such as private security companies.

79. Possible areas in which unmanned weapons may be used in the law enforcement context include crowd control; action against specific classes of perpetrators, such as prison escapees or big game poachers; and provision of perimeter protection around specific buildings, such as high security prisons or in border areas. Such systems may also be used to patrol pipelines or in wars on drugs or other crime control or anti-terrorism operations.[38]

80. A South African company, Desert Wolf, is producing a drone known as Skunk Riot Control Copter, which is designed to control unruly crowds without endangering the lives of the protesters or the security staff.[39] A United States firm, Chaotic Moon Studios, is developing the Chaotic Unmanned Personal Intercept Drone, which can fire a dart packed with 80,000 volts at any unwanted intruder or criminal on the run.[40]

81. Another United States company, Vanguard Defense Industries, has manufactured a drone known as Shadowhawk, which can be armed with 37-mm and 40-mm grenade launchers, a 12-gauge shotgun with laser designator or can be fitted with an XREP taser with the ability to fire four barbed electrodes that can be shot to a distance of 100 feet, delivering neuromuscular incapacitation to the victim.[41]

82. There are also armoured robotic platforms and launchers to disperse demonstrators with tear gas or rubber bullets, to inflict powerful electrical shocks

[38] See H. G. Nguyen and J. P. Bott, "Robotics for law enforcement: beyond explosive ordnance disposal", technical report No. 1839 (Space and Naval Warfare Systems Center, San Diego, California, United States of America, November 2000); Kylie Wightman and John Burkett "SWAT and law enforcement robots" (2014), available from http://prezi.com/mjqjpo66zvzc/swat-and-law-enforcement-robots/; Carl Lundberg and Henrik I. Christensen, "Assessment of man-portable robots for law enforcement agencies" (2014), available from www.hichristensen.net/hic-papers/Permis07-Lundberg.pdf.

[39] See http://rt.com/news/167168-riot-control-pepper-spray-drone/.

[40] See http://rt.com/usa/drone-taser-gun-security-650/.

[41] See www.prisonplanet.com/big-sis-gives-green-light-for-drone-that-tazes-suspects-from-above.html.

and to mark perceived troublemakers with paint.[42] Such weapons platforms may also be equipped with firearms, light weapons or tear gas. A Germany company, VDI Technologiezentrum, has developed automatic tear gas systems that release doses of tear gas if perpetrators ignore the warning and enter further into a restricted area. Some States, including Brazil and the United Arab Emirates, use autonomous robots to monitor crowds.[43]

83. It should be asked whether remote-controlled weapons systems should be as readily viewed as legal weapons in the law enforcement context as in armed conflict. The relationship between the State and those under its protection is very different from its relationship with those whom it regards as its enemies during armed conflict. Law enforcement officials have a much stronger duty to consider the specific circumstances of each individual case before using force, including the subjective intention of those against whom force is used, than is the case during armed conflict. Unmanned systems generally also do not allow for capture, rather than the use of force.

84. The international community has over the past two years begun to engage with the emergence of increasingly autonomous weapons systems in the military context; that is, unmanned weapons with on-board computers that, once activated, can select and engage targets with no further human intervention.[44] This may well happen in the law enforcement context as well, thereby challenging a range of human rights.[45]

85. The rights in question are, in particular, the right to life (and bodily integrity in general) and the right to human dignity. It can be questioned to what extent autonomous weapons systems will have the capacity to determine the level of force, including lethal force, permissible in a particular context, especially given the limitations of the systems in terms of understanding human intentions and the subtleties of human behaviour. Using unmanned systems to deliver force in the law enforcement context is also likely to be seen in many contexts as adding insult to injury, and an affront to human dignity. For example, using unmanned systems against striking mine workers, even if less lethal, could easily be viewed as less than human treatment. I have argued elsewhere that a whole range of human rights are potentially affected specifically by autonomous weapons systems.[46]

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[42] See www.technorobot.eu/en/riotbot.htm and www.theverge.com/2014/3/8/5484924/the-cupid-taser-drone-sxsw-2014-video.

[43] See www.fastcompany.com/3009827/dubai-debuts-drones-for-crowd-control.

[44] Human Rights Watch and Harvard Law School's International Human Rights Clinic, *Losing Humanity: The Case against Killer Robots* (2012), p. 2. Available from www.hrw.org/sites/default/files/reports/arms1112ForUpload_0_0.pdf. See also: www.stopkillerrobots.org; A/HRC/23/47, para. 38; report of the International Committee of the Red Cross expert meeting on autonomous weapon systems: technical, military, legal and humanitarian aspects, Geneva, 26-28 March 2014, p. 6 (available from www.icrc.org/eng/assets/files/2014/expert-meeting-autonomous-weapons-icrc-report-2014-05-09.pdf); and Convention on Certain Conventional Weapons Meeting of Experts on Lethal Autonomous Weapons Systems, Geneva, 16 May 2014 (see http://bit.ly/1jSlCro).

[45] Human Rights Watch and Harvard Law School's International Human Rights Clinic, *Shaking the Foundations: The Human Rights Implications of Killer Robots* (2014). Available from www.hrw.org/sites/default/files/reports/arms0514_ForUpload_0.pdf.

[46] Christof Heyns, "Autonomous weapons systems and human rights law", presentation made at the informal expert meeting organized by the States parties to the Convention on Certain Conventional Weapons, Geneva, 13-16 May 2014. Available from www.unog.ch/80256EDD006B8954/%28httpAssets%29/DDB079530E4FFDDBC1257CF3003FFE4D/$file/Heyns_LAWS_otherlegal_2014.pdf.

86. Serious consideration needs to be given to whether unmanned systems, in particular autonomous weapons systems used in the context of law enforcement, whether with lethal or less lethal force, can be considered lawful weapons per se.

87. The question arises about the appropriate forums within the international system to deal with these concerns. Increasing autonomy in force delivery can occur in various contexts: during armed conflict (where the force at stake will mostly be lethal) or law enforcement (where the norm is the use of minimum force, often taking the form of "less lethal force").[47] A coherent approach is called for: the human rights bodies dealing with these issues should take note and engage with the processes in disarmament bodies, and vice versa, with both approaches having an important role to play (see A/HRC/26/36, para. 144).[48]

C. Recommendations

88. **The United Nations High Commissioner for Human Rights should convene an expert group to examine the application of the international human rights framework to less lethal weapons and unmanned systems in the context of law enforcement and private security, focusing on the legality of the weapons and restrictions on their use. The High Commissioner should recommend a process to the Human Rights Council, also involving other important stakeholders such as the United Nations Office on Drugs and Crime (UNODC), to fill identified gaps.**

89. **The international community, and in particular the various United Nations bodies, must adopt a comprehensive and coherent approach to autonomous weapons systems in armed conflict and in law enforcement, one which covers both the international humanitarian law and human rights dimensions, and their use of lethal and less lethal weapons. As such, the various international agencies and institutions dealing with disarmament and human rights, such as the Convention on Certain Conventional Weapons and the Human Rights Council, each have a responsibility and a role to play.**

V. Resumption of executions

90. In a previous report, I have brought to the attention of the General Assembly the trend in State practice, at the global level, towards the abolition of the death penalty (A/67/275, paras. 17-22). The trend is in line with the requirement under international law, identified in paragraphs 39 to 42 of that report, for the progressive abolition of the death penalty. The existence and continuation of this trend

[47] The term "lethal autonomous weapons systems" (LAWS), is used in the Convention on Certain Conventional Weapons (see http://bit.ly/1jSlCro). The Special Rapporteur has used the term "LARS" (lethal autonomous robots) (see A/HRC/23/47). Upon reflection, the use of the word "lethal" unduly restricts the discussion, and excludes less lethal applications, for example during law enforcement.

[48] That autonomous weapons systems are not yet in use does not diminish the responsibility of the various bodies. The Human Rights Council, for example, is explicitly required to contribute towards the prevention of human rights violations (General Assembly resolution 60/251, para. 5 (f)).

subsequently received further confirmation,[49] pointing towards the real possibility that the death penalty is nearing its end.

91. At the same time, this is not a linear process; in isolated cases there are resumptions and extensions of the death penalty that could constitute violations of the right to life. Moreover, recent developments have shown that announcements by States that they will stop executions cannot always be accepted at face value and should therefore be followed by formal steps, including legal abolition.

92. At a subsequent stage of its current session, the General Assembly will again consider a resolution calling for a global moratorium on executions, with a view towards abolition. It is appropriate therefore to dedicate a section of the present report to the question of the resumption of executions.

A. Resumption of executions since 2012

93. Over the past two years, 10 countries have conducted executions after a period of two years or more during which there were none.[50]

94. In some cases, the practice of non-execution was firmly entrenched. For example, in the Gambia, after 27 years when there were no official executions, nine death row inmates were killed by firing squad in August 2012. This happened despite the fact that, during the universal periodic review of the Gambia in the Human Rights Council in 2010, its Government had reaffirmed the moratorium. In September 2012, a renewed conditional moratorium on executions was announced by the President.

95. In November 2012, a man convicted for his role in the 2008 terrorist attack in Mumbai, India, was executed with no prior announcement. It was the first execution to be conducted in India in more than eight years.

96. In Nigeria, four executions were conducted in June 2013 in Edo State, the first since 2006. No advance notice was given to the families, and the executions were carried out while legal proceedings and appeals were under way. In 2009, the Government had expressed its commitment to a moratorium during its universal periodic review. The Minister of Justice has since reaffirmed a moratorium at the federal level.

97. In several cases, the resumption took place with no public announcement, or even notification to relatives or lawyers.

B. Concerns from the international law perspective

98. At the very least, it is clear that resumptions of executions run counter to the international trend towards the reduction and eventual abolition of the death penalty. However, they also raise the question as to what extent resumption after a long period is compatible with human rights.

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[49] Amnesty International, *Death Sentences and Executions 2013* (March 2014). Available from www.amnestyusa.org/sites/default/files/act500012014en.pdf.

[50] In 2012, in the Gambia, India and Pakistan; in 2013, in Indonesia, Kuwait and Nigeria; and, to date in 2014, in Belarus, Egypt, Equatorial Guinea and Singapore.

99. In its resolution 2005/59, the Commission on Human Rights called upon States that had recently lifted or announced the lifting de facto or de jure of moratoriums on executions once again to commit themselves to suspending such executions. The Human Rights Committee has expressed its deep concern "at the de facto reinstitution of death sentences and executions" in a State party to the International Covenant on Civil and Political Rights (CCPR/CO/84/SYR, para. 7). In general comment No. 6 (1982), it was concluded that all measures of abolition should be considered to be progress in the enjoyment of the right to life.[51] This means that, conversely, any resumption of executions, as does any other measure that increases the use of the death penalty, leads to less protection of the right to life.

100. At present, the United Nations considers States to be de facto abolitionist if they have carried out no executions for 10 years (E/2010/10 and Corr.1, para. 3 (c) (i)). If executions are resumed after being suspended for a decade or more, then the categorization of these States is undermined.

101. Working groups convened within the context of the universal periodic review — understandably — often comment positively on the existence of moratoriums. However, States that have not yet gone beyond a de facto moratorium may find themselves being asked to give increased assurances of a non-return to executions.

C. Potential arbitrariness of resumption

102. If executions were suspended for an extended period, it is unclear how authorities would be able to provide objective reasons for their resumption at a specific point in time, or for specific prisoners on death row, especially if no prior announcement is made. If the timing of an execution and the selection of prisoners are essentially decided upon at random, those executions are rendered arbitrary.

Extraneous causes

103. Executions may be considered arbitrary if they are resumed owing to extraneous developments, unrelated to the crime or criminal in question. A current deterioration in the law and order situation of a particular State is not attributable to a convict on death row, who may have committed his or her crime years, or even decades, before. The execution of that convict in order to demonstrate strength in the criminal justice system is arbitrary.

104. Even if one assumes that the convict on death row is guilty of a most serious crime, outside factors that may prompt a Government to resume executions have no relationship to his or her culpability, or therefore to the punishment applied.

Legitimate expectations

105. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that convicts and family members have a right to prepare for death (A/67/279, para. 40). This implies that, when a Government changes its position concerning executions, sufficient notice must be given. The newly reinforced anxiety for both prisoners and family members must be mitigated

[51] General comment No. 6: Article 6 (Right to life), 1982 (HRI/GEN/1/Rev.9 (Vol. I)), para. 6.

not only by giving time to adapt, but also by allowing lawyers to explore all available legal options. In the context of the resumption of executions in India in 2012, it was reported that the authorities explained the lack of prior announcement with the need to avoid intervention from human rights activists.[52]

106. Even if one rejects the idea that prisoners and their families may have developed something akin to legitimate expectations to avoid execution, it should be noted that other participants in the process may have. For example, prosecutors are arguably more inclined to demand and judges to impose death sentences if they assume the sentence will not be implemented. The psychological pressure on prison personnel is different if they assume that they will never have to carry out executions. Resumption of executions destroys a balance that many participants in the process will have taken for granted and could lead to executions that were not intended to become reality.

D. Conclusion

107. **The overall trend away from the death penalty is certain and ongoing. It appears safe to say that States that have begun to move away from the death penalty will increasingly be expected to confirm that position in law.**

108. **In a world in which human rights mechanisms operate on timescales considerably shorter than 10 years (during which, for example, a State could conceivably undergo three universal periodic reviews), it is worth considering how perceptions of a moratorium may alter the circumstances of individual cases.**

109. **At the very least, the examples of several of the resumptions of execution discussed above underline the fundamental need for States to make public their intentions concerning executions in advance, allowing sufficient time for relevant legal challenges to be prepared and heard.**

E. Recommendations

110. **Moratoriums should be formally established in line with the relevant resolutions of the General Assembly on the use of the death penalty or, better yet, measures to abolish the death penalty should be enshrined in law.**

111. **Human rights bodies, Member States during universal periodic reviews and other observers, while welcoming moratoriums, should encourage States to formalize the abolition of the death penalty in law.**

112. **Should a State nevertheless decide to resume executions, it is important that authorities at least give advance notice. This corresponds with a more general obligation of States to practise the death penalty transparently.**

[52] Amnesty International, *Death Sentences and Executions 2012 (April 2013)*, p. 20.

VI. Statistical approach to the right to life

113. The importance of taking an evidence-based approach to human rights is widely recognized. Explored in the present section are the implications of keeping statistics regarding the right to life.

114. It should be emphasized at the outset that human rights is about more than just counting bodies. An exclusive emphasis on statistics can very easily lead to a crude utilitarian approach, in which lives are measured against one another and the approach that leads to the net protection of life is given automatic preference. Notions such as dignity are also irreducible values within the human rights canon, which eschews the weighing of lives against one another because it regards the value of life as ultimately unquantifiable. What is at stake is the protection of dignified life.

115. While protecting the right to life is thus not merely about counting bodies, without reliable statistics it will in many cases not be possible to ensure that sensible policies are followed in the pursuit of prevention of and accountability for violations of the right to life. The contention here is that accounting for life, both in the sense of keeping count of life and death and in the sense of holding to account those responsible for violations, is a central part of the State's responsibility with regard to the right to life.

A. Benefits of counting

116. Measuring the implementation of the right to life requires data and statistics that are conceptually sound, empirically validated and relevant to the context in which they are used. The Office of the United Nations High Commissioner for Human Rights has developed a framework of indicators to respond to a long-standing need for appropriate data and statistics in furthering the cause of human rights. The framework aims to translate human rights standards into indicators that are contextually relevant and feasible at the national level. It was used to develop illustrative indicators on a number of rights, including the right to life.[53] In addition to numbers of killings, this might also involve other indicators, such as numbers of deaths in custody (by cause of death).

117. The most obvious and direct benefit of proper statistics with regard to life and death for both international and national observers is the comparative benefit. Contrasting the homicide rates of two countries, or of two periods of time within one country, could be a useful analytical resource. At the regional or global level, accurate statistics would allow for the establishment of realistic and measurable goals or targets in terms of reduction.

118. In addition to those analytical benefits, accurate figures about violent (and other) deaths are invaluable to guiding policy, and might be referred to as the programmatic benefit. Being able to measure the effect of specific policies, or more accurately to focus upon problem demographics or modalities of killing, leads to better-targeted policymaking at both the national and international levels. In a public

[53] See Office of the United Nations High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (New York and Geneva, 2012). Available from www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx.

health context, when statistics are available, practitioners constantly refer to them to substantiate claims for prioritization or success.

119. Less obvious, but perhaps more important, are the normative and procedural benefits. First, the process of counting serves to make the point that all lives are of equal value, transcending national and other divides. Second, it underlines the fact that the State's responsibilities with regard to life go beyond simply respecting it (and hence not engaging in unlawful killing through its own agents) and extend to protecting it (and hence preventing people from being killed unlawfully by non-State actors). To do this effectively, States must have knowledge of when and how lives have been lost and, where applicable, hold the perpetrators to account.

B. Measuring loss of life statistically

120. There are broadly four levels of analysis concerning lives and deaths, with increasing levels of subjectivity. The first level is basic population data. The second level subdivides population data into only those deaths that are objectively determined to have been violent. The introduction of a subjective element, the third level, narrows the scope to criminal violent deaths (homicides), but tends to exclude killings where subjective determination is complex: for example, in situations of armed conflict. The fourth level is the human-rights-based framing of an unlawful killing, that is, a criminally violent death in which the State was either directly involved or that it should have done more to prevent.

121. Counting at the various levels becomes more difficult as the number of subjective factors increases (especially factors that may not be determined for several months, if not years, after the event). Accurate global counting at the fourth level is not currently practicable.

122. There are two main methods for keeping track of deaths (i.e. incident reporting) at the second and third levels, which can be used separately or in conjunction. The first is analysis of public health records; the second is the collation of police reporting. The leading exponents of global collation of incident reporting are the two global agencies charged with health and crime, respectively.

Violent death: World Health Organization

123. The public health approach treats violent death in an objective way. Because most countries require public health authorities to register each death, public health records can represent the most reliable incident reporting systems. Moreover, they are less susceptible to subjective influences (e.g. legal definitions of homicide or political pressure to reduce crime).

124. The World Health Organization (WHO) is responsible for assessing causes of death on a global scale, and hence for collating public health data. Using a universal classification, the International Statistical Classification of Diseases and Related Health Problems (ICD), WHO produces global health estimates (GHE). Included in the tenth revision of the Classification (ICD-10) are various categories of "Assault" (X85-Y09) and "Legal intervention and operations of war" (Y35 and Y36). These are condensed into two GHE codes, "Interpersonal violence" and "Collective violence and legal interventions" (GHE (2012), Nos. 158 and 159). A measure of

violent death (the second level discussed above) can be deduced by combining the two.

125. A comparison of the number of violent deaths and the violent death rate (per 100,000 annually) in various regions of the world between 2012 and 2000 appears in the table. The indication of a reduction of global levels of violence by more than 10 per cent is very promising. The significant increase in interpersonal violence in both sub-Saharan Africa and Latin America is, however, a cause for concern that requires further exploration, especially when contrasted with substantial reductions in other regions over the same period.

Violent deaths per 100,000 by (World Bank) region, 2000-2012

	2012			*2000*			
	Inter-personal violence	*Collective violence*	*Violent death rate*	*Inter-personal violence*	*Collective violence*	*Violent death rate*	*Percentage change*
World	**504 587**	**119 463**	**8.82**	**489 650**	**122 373**	**9.99**	**-12**
High-income countries	43 158	2 332	3.52	72 748	9 197	6.82	-48
East Asia and Pacific	51 678	4 954	2.79	74 266	9 013	4.52	-38
Europe and Central Asia	11 153	1 983	4.85	20 512	1 018	8.35	-42
Latin America and Caribbean	164 460	1 465	28.54	138 057	3 366	28.27	1
Middle East and North Africa	12 728	73 114	25.22	9 224	3 756	4.69	+438
South Asia	89 043	21 932	6.73	73 641	18 300	6.65	1
Sub-Saharan Africa	132 367	13 684	16.02	101 203	77 724	26.92	-40

Source: *Unlawful Killings in Africa: A Study Prepared for the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* (Cambridge, United Kingdom, University of Cambridge Centre of Governance and Human Rights, June 2014.

126. One important caveat to bear in mind with regard to WHO figures, however, is that they rely upon national reporting. Where this reporting is weak (such as in many parts of Africa), WHO must rely upon statistical modelling.[54]

127. With the publication of its *World Report on Violence and Health* series, WHO and its Violence Prevention Alliance have brought the problem of violence into the ambit of a public health approach. This was recently exemplified by resolution WHA67.15, adopted by the World Health Assembly on 24 May 2014, in which attention was drawn to the role of the health system in addressing violence reduction, in particular violence against women and girls.[55]

Criminal violent death: United Nations Office on Drugs and Crime

128. In most settings, violent deaths are also reported by the police. Using forensic information from the autopsy reports, the police and the criminal justice system investigate the intent and perpetrator of the killing.

[54] On WHO statistics in general, see Colin D. Mathers and others, "Counting the dead and what they died from: an assessment of the global status of cause of death data", *Bulletin of the World Health Organization*, vol. 83, No. 3 (March 2005), pp. 171-187.

[55] Available from http://apps.who.int/gb/ebwha/pdf_files/WHA67/A67_R15-en.pdf.

129. UNODC compiles national police reporting in order to provide the rate of homicides per 100,000 population. According to the definition currently used, intentional homicide is "unlawful death purposefully inflicted on a person by another person". This definition has three elements:

(a) The killing of one person by another (objective element);

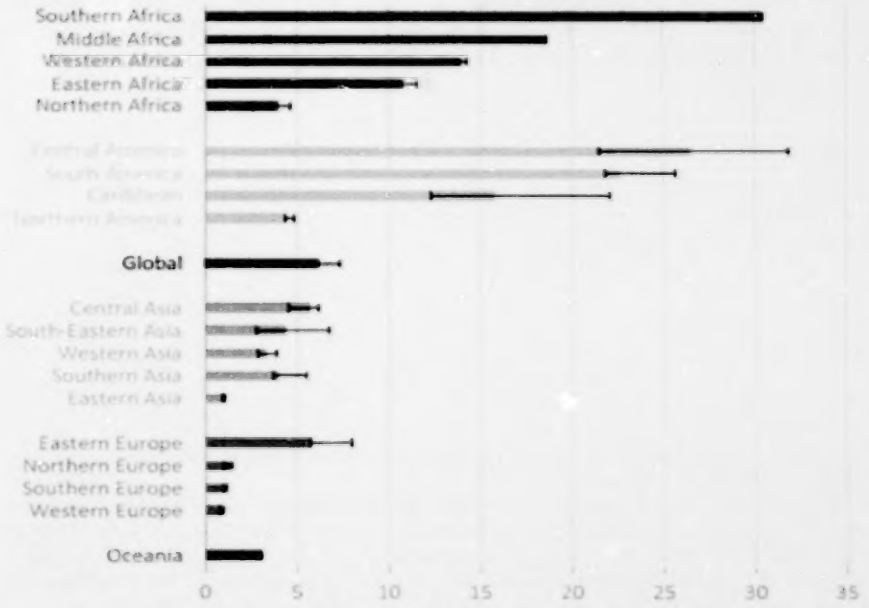
(b) The intent of the perpetrator to kill or seriously injure the victim (subjective element);

(c) Intentional killing is against the law (legal element).

130. Data on the global incidence of homicide are compiled by UNODC primarily from such procedures as the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems and hence rely heavily upon States reporting their own statistics. In a regrettable number of cases, States cannot or do not provide sufficient information. In such circumstances, UNODC adopts figures from public health data.

131. The data compiled in 2013 suggest a current global homicide rate of 6.2 cases per 100,000 population. The variation of this rate by region is illustrated in figure I. It also varies widely by country, with an extreme of more than 90 per 100,000, but with more than 20 States having a homicide rate of less than 1 per 100,000. The five countries with the highest homicide rates (all more than 40 per 100,000) are all in Central or South America.[56]

Figure I
Homicide rate per 100,000 population by subregion, 2012 or most recent



Source: United Nations Office on Drugs and Crime homicide statistics.
Note: Bars represent population weighted average homicide rate, with high and low estimates.

[56] See www.unodc.org/gsh/en/data.html.

132. The recent UNODC *Global Study on Homicide 2013* contains sections on sociopolitical homicide, unlawful killings by law enforcement authorities and the killing of journalists. One chapter is dedicated to examining how homicide, violence and conflict overlap in post-conflict settings. All these are subjects directly relevant to my mandate.

133. The formulation of an international classification of crime for statistical purposes is nearing completion. It will be a welcome development if categories of killing, such as honour killings, dowry deaths, infanticide and deaths caused by excessive force by law enforcement or other State officials, are included therein. Once the classification is finalized, it will be important that States use it to submit national crime statistics.

Mixed measurements

134. A number of well-respected civil society organizations track violence on a global scale. They are a valuable source of statistics concerning deaths directly (and indirectly) caused by conflict.[57] The Office of the United Nations High Commissioner for Human Rights has also conducted anaiysis based on statistical indicators from a wide range of sources.[58]

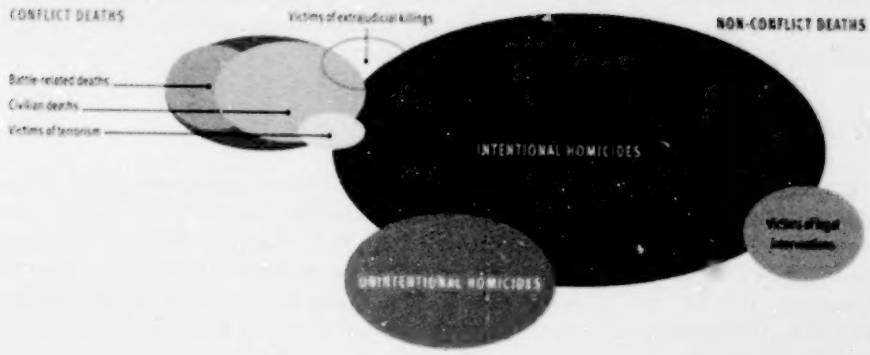
135. One interesting civil society example is that of the organization monitoring the Geneva Declaration on Armed Violence and Development, which analyses statistics on violence at a global level, both within armed conflict and outside it. Its report, *Global Burden of Armed Violence*, places the number of interpersonal homicides worldwide within the context of the overall number of violent deaths (including direct conflict deaths and deaths during legal interventions).[59] The proportions shown in figure II draw attention to the significance of homicide as by far the greatest interpersonal threat to life. This should be taken seriously in discussions of the right to life.

[57] For example, the Heidelberg Institute for International Conflict Research, the Human Security Report Project and the Uppsala Conflict Data Program.

[58] For example, the Office recently led a statistical analysis compiling a list of 92,901 documented cases of individuals killed in the Syrian Arab Republic between March 2011 and April 2013. The analysis shows a dramatic increase in the average monthly number of documented killings since the beginning of the conflict, from around 1,000 per month in the summer of 2011 to an average of more than 5,000 per month since July 2012. The list, compiled using data sets from eight sources, also provides information on killings by subregion, gender and other characteristics of the victims. The analysis is available from www.ohchr.org/Documents/Countries/SY/HRDAG-Updated-SY-report.pdf.

[59] Geneva Declaration Secretariat, *Global Burden of Armed Violence* (Cambridge, United Kingdom, Cambridge University Press, 2011), p. 43.

Figure II
How violence is reported and recorded



Source: Geneva Declaration Secretariat, *Global Burden of Armed Violence* (Cambridge, United Kingdom, Cambridge University Press, 2011).

C. Limitations of statistical measurement

136. The single greatest procedural limitation to a statistical approach is the lack of comprehensive reporting. As noted above, the regional variation in quality of reporting is very large, and often reporting is weakest in areas in which it is needed most. This in and of itself reflects a lack of accountability and thus a general violation of the right to life. Governments either have the information and choose not to share it through health or crime surveys, which is a problem, or they simply do not know how people are dying within their jurisdiction, which is arguably worse.

137. Improvement in this area involves two linked development priorities. To keep track of deaths properly, it is necessary to know who was alive. Accurate birth registration and census information is lacking in many parts of the world. Moreover, the insufficiency of crime reports is a significant limitation on both the ability of the police to uphold the law and that of the State to address the problem of lethal violence. The development of capacity around both issues should be emphasized.

138. It should also be noted that both types of incident reporting generally provide conservative estimates. In countries with limited financial resources, health facilities accord priority to the treatment of patients over the accurate capture of causes of injury or death; not all countries have the same legal definitions; some types of homicide (such as honour killings) may go unreported; and most police forces will not record a homicide without having found a body. These limitations to incident reporting are even more pronounced in conflict settings.[60]

139. It must be emphasized that none of the statistics described above explicitly concern unlawful killings, the direct subject of my mandate. It is possible that the factors determining whether a given killing is unlawful in an international sense are

[60] Geneva Declaration Secretariat, *Global Burden of Armed Violence* (Cambridge, United Kingdom, Cambridge University Press, 2011), p. 50.

too subjective to be grouped statistically. Moreover, it is unlikely that such human rights violations as unlawful killings will ever be fully captured by a system that is reliant on reporting by States. It is important to re-emphasize, however, that the types of killings considered above could incur a State responsibility with regard to the right to life, if left unaddressed.

D. Conclusion: establishing targets

140. **Regrettably, the world is not yet at a stage where each individual life is equally well tracked: just one of many ways in which the ideal of fundamental equality of life remains distant. Working from the normative basis of the right to life, however, leads to the assertion that, to protect that right, States need to treat any loss of life (whether a homicide, a death occurring during armed conflict or a death occurring during a legal intervention) as a significant event worthy of official record. From this point, the requirements of transparency dictate that information about deaths must be shared with intergovernmental organizations such as WHO and UNODC.**

141. **Human rights work cannot be guided only by statistics, but such measurements can be used to establish targets. In this respect, it is to be welcomed that the issue of violence reduction has been proposed as part of the post-2015 development agenda, with a proposal to halve violent deaths by 2030.**[61] **Others have suggested that the international community should aim to reduce the global homicide rate to 2 per 100,000 population by 2060.**[62]

142. **It should be noted that, while development goals will bring welcome attention to the question of homicide rates or rates of violent death, they will also increase the incentive to blur the reporting of killing so as to exaggerate progress. It is important that responsibility for the monitoring of crime statistics be vested in independent and transparent bodies, such as police oversight mechanisms, and that such bodies firmly resist political pressures concerning their reporting.**

143. **While it would be reductionist to become overly focused on statistical goals, for the remainder of my mandate I shall look to cooperate with WHO and UNODC and relevant civil society organizations to achieve greater prominence for the issue of the right to life and violence reduction, including within development agendas.**

E. Recommendations

144. **Greater attention should be paid to violent death rates, criminal homicide rates and other right-to-life indicators during discussions of the right to life in universal periodic reviews and other human rights mechanisms.**

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[61] See http://sustainabledevelopment.un.org/content/documents/4523zerodraft.pdf.

[62] Manuel Eisner and Amy Nivette, "How to reduce the global homicide rate to 2 per 100,000 by 2060" in Rolf Loeber and Brandon C. Welsh, eds., *The Future of Criminology* (Oxford, Oxford University Press, 2012).

145. **United Nations agencies and other international actors should support efforts to establish a specific target for the reduction of violent deaths within the post-2015 development agenda.**

146. **Donors and development agencies should work to increase national capacity for the accurate measurement of life and death (including both birth and death registration), in addition to the reporting (in a depoliticized manner) of national crime statistics. States should make available to the international community, through such mechanisms as the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, all information with regard to loss of life and other crimes.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on minority issues, Rita Izsák, in accordance with General Assembly resolution 68/172.

* A/69/150.

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Report of the Special Rapporteur on minority issues

Summary

Persons belonging to minorities are frequently the victims of violence and atrocities. Violence can take the form of attacks on individuals, their homes, shops or places of worship, or wider acts of aggression against communities with different national, ethnic or religious identities. In the worst cases, violence constitutes mass atrocities, crimes against humanity, war crimes, ethnic cleansing and even genocide, often perpetrated with impunity. Sometimes violence is committed by non-State actors, including those belonging to the majority, or larger, more powerful groups, extremist groups, or even business actors. Sometimes it is perpetrated by State actors.

A primary objective of the United Nations and most States in the area of peace and stability is to prevent violence before it breaks out. The tragic experiences of past violence and atrocities have helped to better understand the causes of violence and the fact that minorities are frequently targets, and to produce indicators to predict violent incidents and provide early warning. While violence can be difficult to predict, States too often fail to translate clear early warnings into adequate, appropriate and timely measures to prevent or stop violence. In order to save lives and ensure peaceful societies, a high priority of stakeholders at all levels must be to improve prevention mechanisms and turn early warning into early action.

Essential elements of strategies to better prevent and address violence against minorities consist of the adoption of measures to foster unity among different population groups, the comprehensive implementation of minority rights and the establishment or strengthening of institutional and policy frameworks for the protection of minority rights. At the national level, good and inclusive governance, which includes minorities and measures to ensure equality, are key prevention prerequisites. The international community must also improve its ability to engage and assist States in efforts to prevent and resolve violence and to effectively intervene where States fail in their responsibility to protect minorities.

I. Introduction

1. The Human Rights Council, in resolution 25/5, decided to extend the mandate of the current mandate holder on minority issues as a Special Rapporteur on minority issues and requested the Special Rapporteur, inter alia, to promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, including through consultations with Governments, taking into account existing international standards and national legislation concerning minorities. A summary of the recent activities of the Special Rapporteur can be found in her annual report to the Human Rights Council (A/HRC/25/56).

II. Preventing and addressing violence and atrocities against minorities

2. Minorities may experience violence owing to such factors as their numerical size; their non-dominant social, economic and political position; their distinct ethnicity, culture, religion or language; social stigma; and the suspicion and prejudice with which they are often viewed by the majority. Minorities are frequently poorly equipped to defend themselves and their rights and poorly protected against violence by government actors which may not include members of minorities. The legislative and institutional environments are frequently inadequate and do not provide legal and practical protection against attack or the possibility of redress and appropriate penalties.

3. Violence against minorities throughout the world demonstrates that action is required in all regions to protect minorities at risk. In many cases violence is committed with impunity, which can fuel further violence. The present report seeks to identify some of the major causes of violence against minorities and to consider actions that should be taken by States and other actors to prevent and appropriately address violence and to ensure that it does not persist or escalate. The historical and ongoing cases of violence referred to are not exhaustive, yet they demonstrate the wide range of situations in which violence against minorities occurs in different regions and the extent to which challenges remain.

4. The Holocaust was one of the clearest examples of large-scale, mass atrocities committed against minority groups. Jewish communities, Roma and Sinti, Jehovah's Witnesses, homosexuals and others fell victim to Nazi propaganda and systematic genocide. The Rwandan genocide is also a clear example of mass atrocities perpetrated against a minority and one where, despite warnings, the international community failed to act. Around 800,000 Tutsis and moderate Hutus were killed. The International Criminal Tribunal for Rwanda determined that the killings constituted genocide. In 1995, the worst massacre of civilians in Europe since the Second World War took place in Srebrenica, where some 8,000 Muslim men and boys were killed by Bosnian Serb forces. The Secretary-General acknowledged the failure of the international community to prevent what was recognized as genocide (see A/54/549).

5. Many other incidents of targeted violence against minorities have been addressed in reports and statements by United Nations bodies and mechanisms. In 2002, Muslims in Gujarat, India, were targeted following a fire on a train in which 58 Hindus died. In the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions who visited India in 2012, the Government acknowledged over

1,000 deaths in the ensuing communal violence (see A/HRC/23/47/Add.1 and Corr.1). The Special Rapporteur expressed concern over the slow progress of investigations while noting the elaboration of the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill in 2011.

6. During her 2006 visit to Ethiopia, the former Independent Expert on minority issues was informed that, in December 2003, 424 ethnic Anuak had been killed in Gambella by members of other ethnic groups (A/HRC/4/9/Add.3). Contributing factors included the relocation to the region of highlanders, and a porous border with troubled Southern Sudan. Heavily armed Sudan People's Liberation Army fighters had entered the region and the influx of refugees resulted in conflicts and a breakdown of traditional land-sharing and conflict resolution arrangements. Despite warnings signs, authorities failed to avert the violence. Conflicts over land use continue in the region.

7. Following years of tensions and disputes over land, in 2003 conflict heightened in Darfur, Sudan, between the Government and rebel groups which accused it of oppressing non-Arab black Africans. Government forces and Arab self-defence militias, or Janjaweed, were accused of a systematic campaign to drive non-Arabs out of the region, resulting in up to 300,000 deaths, hundreds of villages destroyed and massive displacement. The United Nations Commission of Inquiry found that the crimes against humanity and war crimes committed in Darfur might be no less serious and heinous than genocide (see S/2005/60).

8. In Colombia, which was visited by the former Independent Expert on minority issues in 2010, Afro-Colombians reported ongoing violence, selective murders, disappearances, threats and communities forced to flee, despite Government claims that the armed conflict had ended. The Special Rapporteur on extrajudicial, summary or arbitrary executions found that indigenous and Afro-Colombian communities had been victimized by all parties to Colombia's conflicts and that, historically, paramilitaries, sometimes in collusion with State forces, had appropriated land and committed massacres to intimidate local populations (A/HRC/14/24/Add.2, para. 76). Resource exploitation, agriculture and mega-projects have created new motivations for violence.

9. Sectarian killings of religious minorities reportedly rose by more than one fifth in Pakistan in 2013. The Human Rights Commission of Pakistan stated that 687 people had been killed in over 200 sectarian attacks, 22 per cent more than in 2012, while 1,319 people had been injured, a 46 per cent rise.[1] In Bangladesh, numerous violent attacks have been targeted at members of the Hindu minority on the basis of their religion, as raised in a press release by several mandate holders in March 2013,[2] and attacks continue to date.

10. Rohingya Muslims in Rakhine State, Myanmar, face discrimination, exclusion and denial of citizenship.[3] Violence between Rohingya and Buddhists in 2012 left hundreds, mostly Rohingya, dead and over 150,000 displaced. The Special

[1] www.southasianmedia.net/stories/south-asia/violence-against-minorities-rose-alarmingly-in-2013-hrcp-story.

[2] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13204&LangID=E.

[3] See the joint statements made by Special Rapporteurs and the Independent Expert on minority issues on 2 April 2007 and 31 October 2012. Available from, respectively, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7792&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12716&LangID=E.

Rapporteur on the situation of human rights in Myanmar visited in 2014 and stated that community-based, political and religious groups had been conducting, with impunity, well-organized and coordinated campaigns of incitement to discrimination, hostility and violence against Rohingya and other Muslim minorities (A/HRC/25/64, para. 21). He noted the propagation of an agenda to rid Rakhine State of the estimated one million Rohingyas who lived there and concluded that the pattern of widespread and systematic human rights violations in Rakhine State might constitute crimes against humanity (A/HRC/25/64, paras. 45 and 51).

11. In the Central African Republic, armed clashes escalated in 2014, with Christians and Muslims launching reprisal attacks against each other in a country that had rarely before experienced such sectarian violence. In March 2014, the United Nations Special Adviser on the Prevention of Genocide described the abuses as crimes against humanity and stated that Muslims were being deliberately and systematically targeted by the anti-balaka militias and by mobs of civilians in Bangui and in the countryside.[4] He had warned in November 2013 of the risk of genocide.[5]

III. International legal framework

12. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135, annex) has established that States "shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity" (art. 1, para. 1). Its preamble emphasizes that the promotion and protection of the rights of persons belonging to minorities contribute to the political and social stability of States in which they live and that the constant promotion and realization of their rights as "an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States".

13. In its commentary on the Declaration (see E/CN.4/Sub.2/AC.5/2005/2), the Working Group on Minorities stated that the protection of the existence of minorities included their physical existence, their continued existence on the territories on which they lived and their continued access to the material resources required to continue their existence on those territories, and that they should neither be physically excluded from the territory nor excluded from access to the resources required for their livelihood. The Working Group considered that the right to existence in its physical sense was sustained by the Convention on the Prevention and Punishment of the Crime of Genocide, and that forced population transfers intended to move persons belonging to minorities away from the territory on which they lived, or with that effect, would constitute serious breaches of contemporary international standards, including the Rome Statute of the International Criminal Court.

14. In the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A (III), annex), genocide is recognized as an

[4] www.un.org/en/preventgenocide/adviser/pdf/2014-03-12%20Statement%20of%20USG%20Adama%20Dieng%20to%20the%20Security%20%20Council.%20FINAL.pdf.

[5] www.un.org/en/preventgenocide/adviser/pdf/Statement%20by%20Mr.%20Adama%20Dieng,%20United%20Nations%20Special%20Adviser%20on%20the%20Prevention%20of%20Genocide,%20at%20the%20Arria%20Formula%20Meeting%20of%20.pdf.

international crime which entails the national and international responsibility of individual persons and States. According to article II of the Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.

15. In 2004, the post of Special Adviser on the Prevention of Genocide was established with the principal objective of providing advice on actions to protect vulnerable populations from genocide. The Special Adviser identifies potential threats to populations at an early stage and makes recommendations for the more constructive management of cultural diversity issues. By resolution 60/1, the General Assembly adopted the 2005 World Summit Outcome, in which a principle of prime importance to the protection of minorities is established: the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The responsibility to protect prioritizes diplomatic, humanitarian and other peaceful means before force is contemplated. It recognizes, however, the duty of the international community to intervene to protect populations when their own Governments cannot or lack the will to do so. A Special Adviser on the Responsibility to Protect has been designated to lead the conceptual, political, institutional and operational development of the concept.

IV. Factors that lead to vulnerability of minorities

16. While each situation is unique, there are many factors that can potentially lead to or heighten the vulnerability of minorities to violence. While space precludes a detailed analysis, highlighted below are some of the most frequent and important factors.

A. Exclusion and inequalities

17. Gross inequalities and persistent poverty are frequently elements in the complex social, economic and geopolitical equations which lead to conflict and violence. Disadvantaged minority communities are frequently numerically small, politically and economically non-dominant and marginalized, and among the poorest in society. They are often poorly represented in government posts and law enforcement and justice bodies, so are rarely in a position to influence the decisions that affect them. They may be socially marginalized, inter alia, on the basis of their ethnicity or faith, their national origin and historical association with the country, their language, or perceptions of them as foreign or separatist. Such factors might contribute to an exclusionary ideology and can make minorities vulnerable to violence against which they are poorly equipped to respond.

18. Academic studies[6] point to linkages among a low growth rate, inequality and the higher chance of conflict in developing countries. The likelihood of unrest and

[6] Paul Collier and Anke Hoeffler, "Greed and grievance in civil war", *Oxford Economic Papers*, vol. 56, No. 4 (October 2004), pp. 563-595. Available from www.econ.nyu.edu/user/debraj/Courses/Readings/CollierHoeffler.pdf.

violent conflict is higher where there are significant horizontal inequalities in political or economic status between different ethnic or culturally defined groups.[7] Indicators demonstrate how higher rates of educational attainment can lower the risk of internal conflict. In 2009, of the world's 101 million children out of school, an estimated 50 to 70 per cent were members of minorities or indigenous peoples. It is essential that minorities be integrated and able to benefit from development policies. The Special Rapporteur dedicated her annual report to the Human Rights Council in 2014 (A/HRC/25/56) to the importance of including minorities in the planning, implementation and evaluation of new development goals in the post-2015 development agenda, as a means to reduce inequalities.

B. Deficits of democracy, good governance and rule of law

19. While violence can occur in any country, those in which there is a functioning democracy, good governance and the rule of law are less likely to experience violence against specific communities. Competition for resources and positions are natural in all societies and should pose no threat to any community. However, where democracy, rule of law and governance deficits are coupled with competition over territory, resources and power, where bias politics and favouritism along ethnic or religious lines appear, and where minority rights are denied, violated or neglected, tensions between communities can evolve, threatening peace and stability and sometimes resulting in violence. Strong institutions and independent, efficient law enforcement and judicial bodies, as well as independent national human rights institutions, can act against corruption and exclusion before misuse of power starts to fuel community tensions.

20. The peoples under threat index of Minority Rights Group International is based on known antecedents to mass violence, including indicators of good governance, rule of law, prevailing conflict and previous mass killings. It was found that communities are more at risk in closed States that have poor governance, are prone to conflict and have a record of previous killing. In three quarters of recent conflicts, much of the killing has been targeted by ethnicity or religion. While ethnic diversity in a State is not positively correlated with risk of conflict, risks rise sharply when sociopolitical divisions in society fall along ethnic or religious lines.[8]

21. After her visit to Nigeria in February 2014, the Special Rapporteur on minority issues noted that some of the tensions and conflicts that had erupted in Nigeria's northern states and states in the country's middle belt had been depicted as religious or ethnic conflicts. However, she found that, while the tensions and conflicts had obvious religious and ethnic dimensions, their root causes lay also with other factors, including poor governance, competition for or unequal allocation of resources, land issues, political manipulation of ethnic and religious issues, population movement and migration. She considered that, while enhancing the capacity, training and resources of the security forces in regions where violence had broken out was essential, sustainable solutions to communal violence must also

[7] Frances Stewart, "Crisis prevention: tackling horizontal inequalities", *Oxford Development Studies*, vol. 28, No. 3 (2000), pp. 245-262. Available from www.unicef.org/socialpolicy/files/Crisis_Prevention_Tackling_Horizontal_Inequalities.pdf.

[8] *Peoples under Threat 2011*. Available from www.minorityrights.org/10744/peoples-under-threat/peoples-under-threat-2011.html#downloads.

address long-standing and contentious political, economic and social issues and inequalities that had in many cases been long neglected.[9]

C. Hate speech and stigmatization

22. Hate speech in public spheres, in mainstream and social media and by influential figures, including religious leaders, public officials or political groups, can lead directly or indirectly to violence against minorities. Increasing levels of hate speech can be an important indicator of possible violence. Monitoring hate speech and incitement to violence offers the opportunity to be aware of and respond appropriately to specific security risks. The Rwandan genocide provides clear evidence of the power of hate speech to infect societies, motivating thousands to kill neighbours and former friends. Equally, in the Central African Republic, hate speech is recognized as playing a role in inflaming and fuelling violence and has been described by United Nations officials as a possible precursor to serious human rights violations, including potential genocide.[10]

23. Studies are required to understand how hate speech transforms into acts of hate and violence. Hate speech is a factor in a process which seeks to scapegoat, demonize or, in extreme cases, dehumanize others considered outsiders or different, and to portray them as the cause of societal ills or as a threat. The power of hate speech to turn a nucleus of extremist hatred into a mass movement of violence is well documented and measures to counter its impact are essential. Several countries, including some that have experienced atrocities, such as Bosnia and Herzegovina, have adopted legislation to prosecute hate-motivated crimes and incitement to national, racial or religious hatred. Countries such as Canada and the United States of America have created hate crime units within the police force.

24. Article 20 of the International Covenant on Civil and Political Rights (see General Assembly resolution 2200 A (XXI), annex) states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence[11] represents an important step taken by the international community to assist States in implementing their obligations, and provides guidance on balancing freedom of expression, which is protected under article 19 of the Covenant, with article 20. As recommended in the Plan of Action, States should ensure intercultural dialogue and mechanisms and dialogues to foster intercultural and interreligious understanding and learning. States should also promote human rights education and sensitize law enforcement and security forces.

25. The media can have an important role in fuelling and inciting violence. In Rwanda, media were used to both incite and orchestrate widespread violence against the Tutsi minority. Monitoring of media, conducted by independent media regulatory bodies preferably involving minorities, is important to violence prevention strategies. Such bodies can analyse, in the light of international human

[9] Statement of 28 February 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14293&LangID=E).

[10] www.unmultimedia.org/radio/english/2014/03/hate-speech-in-the-central-african-republic-may-be-precursor-to-genocide/.

[11] www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

rights law relating to freedom of expression and prohibition of hate speech, elements and trends present in the media, including online media, which could constitute incitement to violence by means of hate speech. Media monitoring entities should be able to report their findings to relevant authorities in order to prompt an investigation and the initiation of criminal procedures against perpetrators, as appropriate.

26. Hate speech against Roma is widespread in the media and in public political discourse in many European countries. It dangerously labels the entire Roma population as criminal, aggressive or parasites on welfare systems. Roma rarely have access to mainstream media or public positions and seldom have the chance to challenge such stigmatization. The European Union Agency for Fundamental Rights found that one in five Roma reported experiencing racist violence.[12] A tragic manifestation of how hate speech can fuel and turn into hate crimes occurred in Hungary during the period 2008-2009, when brutal attacks against randomly chosen, innocent Roma took the lives of six of them, including a 4-year-old boy. During their trial, the suspects, who were subsequently imprisoned, referred to Gypsy criminality and other expressions used in mainstream media, which they believed justified their actions.

27. On 2 July 2014, the Special Rapporteur on minority issues, along with other United Nations experts, called on Sri Lanka to adopt urgent measures to stop the racial and faith-based hatred and violence directed at Muslim and Christian communities by Buddhist groups with extremist views, and to bring perpetrators to justice.[13] A group known as Bodu Bala Sena (Buddhist Power Force), along with other groups, is promoting extremist views, proclaiming the racial superiority of Sinhala Buddhists and spreading fear among the population by, for example, alleging that statues of Buddha are being bulldozed by religious minorities or that evangelical Christians are forcibly converting vulnerable people. These statements have fuelled tensions and contributed to more than 350 violent attacks against Muslims and over 150 attacks against Christians in the past two years.

28. Media can also contribute to understanding and reconciliation. For example, the Panzagar (flower speech) campaign was launched by activists in 2014 to counter hate speech against Muslims which had become common in the Myanmar media.

D. History of violence with impunity and tensions without reconciliation

29. Other relevant factors which contribute to the outbreak of violence include past and unresolved grievances, a history of ethnic and/or religious tensions between groups without reconciliation, agitation of ethnic or religious components by political leaders, and impunity when perpetrators act without consequences. The Special Rapporteur has noted concern regarding the extent of violence against religious minorities, including in her report to the General Assembly in 2013 (A/68/268) in which she stated that acts of violence and widespread and systematic

[12] European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey, Data in Focus Report 1: The Roma* (2009). Available from http://fra.europa.eu/sites/default/files/fra_uploads/413-EUMIDIS_ROMA_EN.pdf.

[13] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14812&LangID=E.

violations of human rights — sometimes by the State itself — threaten the very existence of religious minorities in some States or territories. The international community should pay particular attention to States in which violence has been targeted against certain population groups with impunity.

30. Caught between warring factions, minorities in Iraq have been the targets of violence for more than a decade. In 2014, the targeting of minorities has continued and intensified under the so-called Islamic State which took control of much of the country. The Special Rapporteur, along with another United Nations expert, issued a press release in July 2014,[14] in which she expressed her grave concern about the physical safety of several minority groups in Iraq, including Christians, Shia, Shabaks, Turkmen and Yazidis, who were being persecuted on the grounds of their religion and ethnicity. She urged the Iraqi Government and the international community to do their utmost to protect vulnerable civilians and minorities.

31. In some cases, violence or the threat of violence against certain stigmatized minority communities is common and almost socially accepted. Despite legislation in India (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, adopted in 1989) which bans caste-based discrimination, violence against Dalits remains widespread and their access to justice poor. In May 2013, the Special Rapporteur, along with other United Nations experts, noted that caste-based discrimination remained widespread and deeply rooted, that its victims faced violence, structural discrimination, marginalization and systematic exclusion and that the level of impunity was very high.[15]

E. Denial or deprivation of citizenship

32. As highlighted by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the former Independent Expert on minority issues (A/HRC/7/23, para. 20), denial or deprivation of citizenship and statelessness affects some 15 million people in 49 countries, particularly those belonging to minority groups. Statelessness makes minorities highly vulnerable, with weak protection provided by State authorities who do not recognize them as citizens whose rights must be protected by the State. In some cases, States actively desire their expulsion, which may result in a minimal response to violence against them by other actors, or in State-sponsored persecution with the intent of removing an unwanted minority.

33. In October 2012, the Special Rapporteur and other independent United Nations experts expressed deep concern over continuing intercommunal violence in Rakhine State, Myanmar, resulting in killings, destruction of homes and mass displacement of mostly Rohingya Muslims.[16] They called on the Government to urgently address the underlying causes of the conflict between the Buddhist and Muslim communities, which included the denial of citizenship to Rohingya. They stressed that the situation must not become an opportunity to permanently remove an unwelcome community, and expressed deep concern about the assertion of the Government that Rohingya were illegal immigrants and stateless persons.

[14] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14904&LangID=E.
[15] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13352&LangID=E.
[16] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12716&LangID=E.

F. Political or regime change

34. Political or regime change can create a new political and social order and conditions under which minorities may be placed at a heightened risk of violence. The Arab Spring in several countries, while initially hailed as a popular revolution against hard-line, autocratic regimes, in practice created new uncertainties for some minorities and, in some cases, increased hostility and violence against minorities, including minority Muslims and Christians. In September 2013, mandate holders addressed a communication[17] to the Government of Egypt, concerning an upsurge of violence against Christian minorities by supporters of ousted President Mohamed Morsi in locations across Egypt. Some 61 churches had been attacked, vandalized and desecrated. Mobs had attacked Christian schools, businesses and homes, and deaths and injuries had been reported.

35. Some attacks may be opportunistic and take place in the context of wider political or social unrest where the normal functioning of law and order has broken down. Following her visit to Ukraine in April 2014, the Special Rapporteur highlighted an escalation of attacks against Roma in the context of ongoing unrest in the eastern and southern regions.[18] In one incident, over 20 men in Slavyansk had entered Roma houses and beaten Roma, demanding money and valuables. Some Roma had been injured and others had reportedly left the region in fear of attack.

36. Where a minority has historically been dominant and has exercised political and socioeconomic or military power over a more numerous majority and is then usurped, there may be a risk of retaliatory violence against that minority following regime change.

G. Multiple or intersectional discrimination

37. Multiple or intersectional discrimination may increase vulnerability to violence. Minority women and girls are particularly affected by violence, targeted for rape and other forms of sexual violence, torture and killings because of their ethnic or religious identity and their gender. In 2011, the Forum on Minority Issues focused on the rights of minority women and girls and, in its recommendations,[19] highlighted the need for peacekeeping operations and national security forces in regions affected by conflict to pay particular attention to minority women and girls, including through training of staff and police and military personnel on the needs and vulnerability of minority women and girls. Minority women should be included in processes of conflict settlement and post-conflict reconstruction.

38. In conflicts in Afghanistan, Colombia, the Democratic Republic of the Congo, Guatemala, Iraq, Kyrgyzstan, Myanmar, Somalia, Sri Lanka and the Sudan, minority women have suffered systematic sexual and other violence. Violence against minority women does not always take place in the context of conflict. Women affected by caste-based discrimination in several countries experience high levels of violence owing to their low caste status and gender, and face killing, rape, gang rape and custodial torture.

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[17] https://spdb.ohchr.org/hrdb/24th/public_-_UA_Egypt_02.09.13_(12.2013).pdf.

[18] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14518&LangID=E.

[19] See United Nations, *Forum on Minority Issues: Compilation of Recommendations of the First Four Sessions 2008 to 2011*, chap. IV. Available from www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Forum_On_Minority_Pub_en_low.pdf.

H. Harmful actions of non-State actors

39. The responsibility of Governments for the protection of human rights and prevention of violence extends to regulating the activities of non-State actors. Enterprises and business actors have been involved in violence affecting minorities, for example, against minority groups which occupy lands or territories that are of value for agricultural development, natural resource exploitation or national development projects. Minorities have often found themselves the victims of intimidation and violence by actors wishing to take control of those lands and resources. In some cases, national and/or international businesses instigate violence against minority communities with the complicity or agreement of the Government: for example, to gain access to the land or resources located where minority communities live.

40. In Cameroon, visited by the Special Rapporteur in September 2013, an estimated 300 Mbororo pastoralists were made homeless and evicted from their ancestral lands in early April 2014 in the locality of Bamenda, when the Catholic University claimed ownership of their land for the construction of a University building. The Special Rapporteurs on minority issues and on the rights of indigenous peoples urged the authorities and the Catholic University to review their actions and their impact on this community and to seek a settlement.[20]

41. On 26 March 2014, Special Rapporteurs issued a press statement[21] when the local government of Da Nang, Viet Nam, decided to expropriate the land used by Con Dau village for housing and agriculture, which appeared to be a clear case of land grabbing for the benefit of private entrepreneurs. Con Dau was built by many generations of residents who had shaped their culture through the cultivation of rice and church activities. The parish cemetery, a national cultural heritage site, has been demolished and removed to a remote area.

42. Persons belonging to minorities have the right to participate in decisions concerning them or their region. States are the primary duty bearers with territorial jurisdiction, including over such third parties as business enterprises, as reflected in the Guiding Principles on Business and Human Rights.[22] Among the measures adopted to prevent violence against minorities when business actors are involved, it is essential to legally regulate and closely monitor business activities and to institutionalize channels for consultation among affected communities, Government and enterprises at all stages of operational activity. Minorities must be able to raise their issues and concerns about the impact of business and development activity on communities. The principle of free, prior and informed consent should be applied to minorities and their lands and territories.

43. States must fully investigate incidents of violence and, where business actors prove to be instigators or perpetrators, impose appropriate sanctions in accordance with the law, including the termination of contracts and criminal prosecution. Victims must be adequately and swiftly compensated. As stated by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/32, para. 5),

[20] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14496&LangID=E.

[21] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14438&LangID=E.

[22] United Nations, *Guiding Principles on Business and Human Rights* (HR/PUB/11/04). Available from www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

conflict-affected areas are commonly where the most egregious business-related human rights abuses take place.

44. Violence against minorities may be committed by extremist, terrorist, far-right or radical ethnic or religious actors who constitute armed groups or insurgents. Such violence may be targeted against specific minorities, as is the case with the Islamic State in Iraq which has targeted religious minorities in areas under its control, or may target and impact diverse communities, as is the case with the violence by Boko Haram in northern regions of Nigeria. The activities of such groups may also serve to destabilize societies in general and create and deepen divisions between population groups. Measures to confront such illegal and violent actors are vital to maintaining inter-ethnic and interreligious harmony.

45. It should also be recalled that non-State actors can have a positive role to play in preventing violence and can use their often significant influence to promote human rights in the environments in which they operate. Business enterprises, working in compliance with the Guiding Principles on Business and Human Rights and ensuring consultation with minorities can, for example, pursue their activities in a manner that minimizes negative impacts on minorities and their environments and can reduce the threat of violence.

I. Armed conflict

46. An already existing armed conflict constitutes a big risk for violence against certain minority groups although is not a precondition for it. In paragraph 12 of his report entitled "Responsibility to Protect: State responsibility and prevention" (A/67/929-S/2013/399), the Secretary-General stated

> Atrocity crimes are more likely to occur during armed conflict, especially internal armed conflict. Armed conflict is itself a source of risk for atrocity crimes, while atrocity crimes can also increase the risk of armed conflict. Not all armed conflict generates atrocity crimes and not all atrocity crimes occur within a context of armed conflict. What distinguishes atrocity crimes is the deliberate targeting of specific groups, communities or populations, including persons protected under the Geneva Conventions, and sometimes cycles of reaction and counter-reaction between communities.

47. In a context of armed conflict, the dynamics and evolution of the conflict may create a situation of extreme vulnerability of minorities, even for those not directly party to it, as has been the case in Iraq and the Syrian Arab Republic, where it resulted in targeted killing, mass displacement and a humanitarian crisis. Civilian populations frequently bear the greatest cost of conflict and minority civilians may be particularly vulnerable. In some cases, men may join or be forcibly recruited into armed factions or flee attacks, while women are left as heads of household, taking care of family members and property.

48. In December 2013, along with other independent United Nations experts, the Special Rapporteur urged all parties in the Central African Republic to call an immediate and unconditional halt to the violence in the country, much of which was targeting minorities.[23] In April 2014, along with the Special Rapporteur on the

[23] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14125&LangID=E.

human rights of internally displaced persons, the Special Rapporteur again voiced her grave concern over the situation of the mainly minority Muslim internally displaced persons in the Central African Republic and urged that minority rights protections be applied.[24] She stressed that the situation in the country was extreme and that saving lives must be a paramount concern.

V. Early warning and urgent response mechanisms

49. Violence against minorities may be difficult to predict and rapidly develop based on a particular event or trigger. However, in some cases warning signs are evident long before violence breaks out and opportunities exist to prevent it at an important early stage. What is essential is that early warning indicators lead to early action to avert violence. The Committee on the Elimination of Racial Discrimination has elaborated indicators relating to the threat of genocide. These and similar indicators can and should be used to identify lower-level risk of violence against minorities. Fifteen indicators were elaborated to assess the existence of factors known to lead to conflict and genocide (see A/60/18, chap. II), and can be summarized as follows:

- Lack of a legislative framework and institutions to prevent racial discrimination and provide recourse
- Denial of the existence of particular groups
- Systematic exclusion from positions of power, employment in State institutions and key professions
- Compulsory identification including the use of identity cards that indicate ethnicity
- Grossly biased versions of historical events
- Forced removal of children
- Policies of segregation
- Speech or propaganda that promotes hatred and/or incites violence against minority groups
- Statements that express support for the superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence
- Violence or severe restrictions targeting minority groups perceived to have traditionally maintained a prominent position
- Serious patterns of individual attacks on members of minorities
- Militia groups and/or extreme political groups established on the basis of racist platforms
- Significant flows of refugees and internally displaced persons belonging to ethnic or religious groups
- Disparities in socioeconomic indicators that evidence serious racial discrimination

[24] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14538&LangID=E.

- Prevention of delivery of essential services or assistance, targeting specific groups.

50. The Committee noted that the significance of the indicators for predicting genocide or violence against racial, ethnic or religious groups should be supplemented by additional general indicators on: (a) prior history of genocide or violence against a group; (b) policy or practice of impunity; (c) existence of proactive communities abroad fostering extremism and/or providing arms; and (d) presence of external mitigating factors, such as the United Nations or other recognized invited third parties.

51. The Special Adviser on the Prevention of Genocide has produced an analysis framework[25] which comprises eight categories of factors for determining the risk of genocide: inter-group relations, including a record of discrimination and/or other human rights violations committed against a group; circumstances that affect the capacity to prevent genocide; presence of illegal arms and armed elements; motivation of leading actors in the State/region, and acts which serve to encourage divisions among national, racial, ethnic and religious groups; circumstances that facilitate the perpetration of genocide (dynamic factors); genocidal acts; evidence of intent to destroy in whole or in part a national, ethnical, racial or religious group; and triggering factors.

52. According to the framework, triggering factors include: upcoming elections; a change of Government outside of an electoral or constitutionally sanctioned process; instances in which the military is deployed internally to act against civilians; commencement of armed hostilities; natural disasters; and increases in opposition capacity, which may be perceived as a threat and prompt pre-emptive action. The Special Rapporteur considers that these valuable indicators can also be applied effectively in situations in which violence may not constitute genocide. Indicators and early warning mechanisms must be employed in practice and lead to alarms being triggered and concrete action taken.

53. Failure to act on early warnings is not confined to the national level. In April 1993, the then Special Rapporteur on extrajudicial, summary or arbitrary executions visited Rwanda. His report, made public in August 1993 but not taken up by the Commission on Human Rights until the following March, warned that the targeting of ethnic Tutsis solely because they belonged to a specific ethnic group might constitute genocide. The international community failed to act on those warnings with tragic consequences.

54. The Representative of the Secretary-General on the human rights of internally displaced persons visited the Central African Republic in 2007 and noted that the security forces lacked capacity to protect the population. A security vacuum was also found by the Special Rapporteur on extrajudicial, summary or arbitrary executions who visited in 2008 and made a follow-up visit in 2010. He noted that villagers were increasingly organizing themselves into ad hoc self-defence groups and that ethnically motivated violence was on the rise. He stated that impunity for killings was pervasive.

55. In January 2009, the Special Representative of the Secretary-General on the human rights of internally displaced persons warned that military operations in the eastern part of the Democratic Republic of the Congo could result in violent

[25] www.un.org/en/preventgenocide/adviser/pdf/osapg_analysis_framework.pdf.

reprisals against the civilian population. Again, action was not taken and the reprisals occurred. In October 2009, in a press release issued after his visit to the Democratic Republic of the Congo,[26] the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that alarm bells were ringing and called on the international community to take immediate preventative measures to avert further killings.

56. In view of the potentially important role of the special procedures in identifying well-grounded facts and signs of potential violence and mass atrocity crimes, the Special Rapporteur on minority issues recommends consideration of strengthened channels of communication and information exchange between special procedures and the General Assembly and the Security Council. Improved use of such procedures as Arria-formula meetings to report findings urgently and directly should be considered. In addition, further consideration should be given to measures to enable urgent engagement with all relevant regional and United Nations bodies and the Human Rights Council outside annual reporting schedules.

57. Civil society is also highly active in warning of and trying to prevent impending crises. In Kyrgyzstan, following the overthrow of President Bakiyev in April 2010, Minority Rights Group International warned that political tension could take on an ethnic character and result in an escalation of ethnic violence. In June, rioting broke out in Osh and Jalalabad with, according to the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe (OSCE), groups of ethnic Kyrgyz attacking ethnic Uzbeks in a systematic manner: killing, looting and burning. Some 500 persons, mostly Uzbeks, were killed and 2,000 buildings were destroyed.

VI. Key elements of preventing violence against minorities

A. Understanding the status of and challenges for minorities

58. To prevent problems and tensions emerging or violence breaking out, it is essential that Governments be aware of the situation of minorities and any threats against them. Minorities are frequently underrepresented in government, public office and decision-making bodies, and consequently their issues and concerns are commonly neglected, misinterpreted or receive less attention than is required to protect their human rights. Dialogue, consultation with minorities and their participation in decision-making are essential principles of minority rights and help States to understand their experiences of discrimination, threats, harassment or acts of violence against them.

59. Accurate data can lead to effective solutions and help to prevent violence. The collection of data disaggregated by ethnicity, religion and geographical location, for example, allows accurate information on the size and situation of minorities and is an important resource. Such data allow the identification of inequalities among groups, lead to a greater understanding of the causes of inequalities, and allow effective solutions to be designed and implemented. Of legitimate concern to minorities, particularly those who have experienced violence, is that data are misused, resulting in their being targeted. Such fears are mitigated if processes fully comply with international standards on the protection and use of personal data.

[26] www2.ohchr.org/english/issues/executions/docs/PressStatement_SumEx_DRC.pdf.

60. A key element in preventing hate-motivated violent crime is to know about existing tensions and better understand what lies behind them. Understanding what inspires hatred, hate speech and its evolution into hate crime is a major challenge but is essential to effectively reducing the threat of violence from society. This requires constant engagement with minority and majority communities, leaders and associations to identify concerns and respond rapidly to situations of emerging tension. In some cases, tensions may be at such a level that relatively small incidents can spark wider violence.

61. Special attention should be given to the situation and perspectives of youth. Young people living in marginalized environments in which there are high levels of unemployment and poverty and education dropout rates, may be vulnerable to recruitment by violent and radical groups. Some community projects working with young adults have been successful in locations where violence has taken place, including in Jos in Nigeria and Srebrenica in Bosnia and Herzegovina. Such projects help to build understanding between young people from different or conflict-affected communities and reduce the risk of their becoming part of the circle of violence.

B. Implementing international human rights standards

62. Full compliance with international standards for equality, non-discrimination and minority rights as well as good and inclusive governance are vital factors in preventing conflict, violence directed towards minorities and atrocities committed against them. Full implementation of minority rights enables national, ethnic, religious and linguistic minorities to enjoy their rights in equality with others, including their economic, social and cultural rights. It also helps to create a general social environment of respect, understanding and acceptance of diversity that is conducive to the peaceful coexistence of different national, ethnic, religious and linguistic groups and that diminishes the threat of violence against any person or group.

63. While extreme nationalist, racist, xenophobic or radical elements may exist in any country, States which fully implement minority rights protections and legal, judicial and institutional safeguards are better placed to ensure that any illegal actions and incitement to acts of violence are prohibited and prosecuted according to the law. Hate-motivated activities are curtailed by legal prohibition and appropriate penalties and through a general societal rejection of them. The threat of prosecution and appropriate penalties is a major deterrent and preventative tool.

64. Good and inclusive governance and political will are paramount. Governments have the primary responsibility to prevent violence and the greatest capacity to deal with issues that might lead to violence, including hate speech and gross inequalities. They can lead efforts that involve numerous governmental and public bodies, including law enforcement bodies that are multisectoral and involve the participation of many different actors. An independent and efficient judiciary is key to ensuring timely accountability and to strengthening democracy and the rule of law.

C. Ensuring institutional attention to minority issues

65. The establishment of domestic legal protection for minority rights is an essential first step; however, legislative measures alone are not sufficient to protect minorities from violence. Ensuring institutional attention to minority issues

constitutes an essential measure to prevent violence, particularly in countries in which historical tensions and violence may have been evident. Dedicated institutional attention increases the Government's capacity to protect minorities in practice and to respond to situations that arise. It promotes engagement with minorities and enables threats to be identified and responded to at an early stage.

66. The establishment of specialized departments or units with responsibility for minority and inter-ethnic and interreligious issues in relevant ministries and within independent national human rights institutions can play a role in preventing violence. Such institutions should have a clear mandate, authority and an allocated budget to operate efficiently. Dedicated institutions, including staff from minorities and with expertise on minority issues, can take the lead in designing and implementing policy, mainstreaming attention to minority issues, monitoring the situation of minorities, establishing complaints mechanisms, promoting consultation, conducting research and investigating human rights abuses, threats and rights violations. In some situations, minority issues should be taken up at the highest government levels to ensure the adoption of adequate institutional and policy frameworks in order to manage diversity where tensions exist.

D. Strengthening security measures and law enforcement bodies

67. The threat of violence against minorities may be such that it requires an immediate operational security response in order to prevent imminent violence or to quickly respond to it. In some situations, a pattern of violent attacks can be identified which allows law enforcement bodies to better predict the occurrence of further attacks. It is the responsibility of the national authorities and law enforcement bodies to act decisively and appropriately. While it may be difficult to predict when or where violent incidents might take place, it must not be a justification for inaction; several concrete measures can be taken.

68. The establishment of mechanisms and processes to raise and respond to alarms is essential to preventing and stopping violence. Ensuring appropriate community liaison promotes trust and establishes and maintains strong and efficient channels of communication between communities and law-enforcement bodies. Identifying the individuals, communities or locations, community leaders or high profile places of worship or congregations that are most at risk is an important step. Increasing a visible security presence in key locations, including places of worship or nearby identified at-risk communities, is a deterrent to violence. In remote locations where there is a low presence of authorities, it may be necessary to establish a security presence to protect local communities.

69. The creation of community or neighbourhood watch and early warning mechanisms that enable at-risk communities to identify threats and quickly contact law enforcement authorities is another measure that has been put in place, including in Nigeria where violence and intercommunal tensions have been present. Having local "eyes and ears" to report potential incidents offers valuable, community-based, early warning potential, although it remains reliant on a rapid response by law enforcement bodies to alerts if it is to be effective.

70. In some situations, members of minority communities have testified that law enforcement bodies were present or informed at the time violence that took place but had failed to arrive or intervene. In the worst cases, victims reported that law

enforcement officers actively participated in violent attacks or colluded with the attackers. In other cases, law enforcement personnel might be poorly equipped or motivated, lack appropriate training or the appropriate command structure to respond to violence.

71. Careful consideration must be given to the training of law enforcement personnel and their ability to respond appropriately and effectively to violent situations, their ethnic or religious make-up, and their motivation. Often minorities are poorly represented in law enforcement bodies and have poor relations with them. Such bodies are largely made up of members of the majority or of certain ethnic or religious groups. As key protection actors, law enforcement personnel must be objective in their response to situations of possible or actual violence against any community. Nevertheless, even a small law enforcement presence can be critical in preventing or stopping violence.

72. Numerous positive practices can help to ensure that law enforcement bodies and officers act appropriately to protect minority communities, without prejudice. These include: initiatives to recruit and maintain personnel from minorities in law enforcement bodies, including at senior levels (e.g. the National Black Police Association in the United Kingdom of Great Britain and Northern Ireland and the Fraternal Association of European Roma Law Enforcement Officers, established in Budapest); deployment of ethnically and religiously mixed battalions to areas of intercommunal tension; training of law enforcement personnel in human and minority rights with specific attention to understanding communities and territories to which they are deployed; introduction of community or proximity policing, in which law enforcement actors develop strong local relations with and knowledge of local conditions and at-risk communities; and establishment of independent oversight bodies.

73. In diverse societies, particularly those in which violence or conflict have previously existed, holistic, inclusive and proactive approaches to law enforcement incorporate such positive practices into a law enforcement and protection strategies. This helps to avoid reactive responses to violence that are frequently inadequate and come too late. Risk assessment methodologies incorporating analysis of past violent events, employed by law enforcement bodies, can enable authorities and others to assess the extent to which certain communities may face the threat of violence and to rapidly respond.

E. Enabling and supporting the operation of civil society

74. Civil society has a vital role to play in detecting the early signs of impending violence, alerting national and international bodies and taking local initiatives to counter it. Violence prevention efforts should not be left only to non-governmental organizations, however. Effective prevention benefits greatly from the full participation of diverse actors, including non-governmental organizations, human rights institutions, businesses, faith groups and community leaders, educational institutions and other stakeholders. Preparing the infrastructure for and promoting a culture of violence prevention necessarily involves many actors with different skills, powers and relationships.

75. Civil society has played an essential role in bringing issues of national concern to the attention of regional bodies and the United Nations. Too often, however, their

information is neglected or rejected by the State in question and does not lead to action or further investigation. In some cases, a practice of denial of allegations by minorities and those working on their behalf and an adversarial relationship between the State and civil society are evident and result in a failure to appropriately address issues and complaints at all levels. This may reflect a wider political stance on minority communities and their marginalized position. A culture of dialogue should replace a culture of distrust.

F. Cooperation with regional and international organizations

76. Regional organizations can have a significant role in preventing and responding to violence, including by engaging with States in a preventative, fact-finding or conflict-mediation capacity. Some regional organizations have practical tools dedicated to minority issues based on strong regional standards. The OSCE High Commissioner on National Minorities is devoted to conflict prevention and early warning of situations that pose a threat to minority communities. Strengthening the attention paid to minority issues by other regional bodies, including the African Commission on Human and Peoples' Rights and the Association of Southeast Asian Nations, which currently lack dedicated mechanisms to monitor the situation of minorities, is vital to regional-based violence prevention initiatives.

77. A coordinated crisis response involving regional and international organizations took place in the Democratic Republic of Congo. In 2008, the Southern African Development Community (SADC) deployed two teams on the ground to assess the situation of escalating violence in the country. In parallel, the International Conference on the Great Lakes Region initiated the creation of a United Nations intervention brigade, which was supported by SADC. In 2013, a comprehensive peace agreement, sponsored by the United Nations and containing specific measures to foster peace and stability in the region, was signed by the members of the International Conference.

VII. Promoting the responsibility to protect

78. The responsibility to protect is a concept of great significance in the protection of disadvantaged minorities from violence. The political will to prevent violence and protect vulnerable communities is an essential prerequisite. In some situations of violence, Governments lack the capacity to end it and must be assisted to do so; however, history demonstrates the central role that States have played in coordinating mass atrocities against minorities. The State, with its frequent domination by a single ethnic or religious group, control over security resources, national media, infrastructure and institutions, can be an efficient perpetrator of violence. Recent evidence also demonstrates that the State as perpetrator is not a matter of history but a modern-day reality.

79. The Secretary-General has laid out a three-pillar strategy for the implementation of the responsibility to protect (see A/63/677), drawn from paragraphs 138 and 139 of the 2005 World Summit Outcome. The first pillar emphasizes the primary responsibility of States to protect their populations by preventing genocide, war crimes, ethnic cleansing and crimes against humanity (atrocity crimes). The second highlights the commitment of the international community to assist States to meet their

obligations and to provide necessary support and capacity-building measures when a State is unable to meet its obligation to protect populations. Under the third pillar, the international community must use appropriate diplomatic, humanitarian and other means to protect populations from these crimes but must be prepared to take additional collective action to protect populations, in accordance with the Charter of the United Nations. The three pillars are not sequential and each pillar is of equal importance. They are also mutually reinforcing: while appointing a special envoy to a country to monitor a deteriorating situation is a response on its own, it is also a preventative tool as it might help to stop the violence from escalating.

80. Even countries with the political will to protect disadvantaged minorities may lack the capacity, expertise and mechanisms to respond appropriately. The Special Rapporteur considers that greater attention should be given under the second pillar to assisting States and providing technical cooperation and capacity-building in the area of minority issues, including training in minority rights and effective practices for the protection of minority rights, and in the management of diverse populations for officials, including law enforcement bodies and the judiciary.

81. Governments can be active perpetrators, that is, directly involved in the commission of crimes by means of security forces or mercenaries, or passive perpetrators, when they do not act to protect a group that is subjected to atrocities by non-State actors. When Governments fail, the international community must take adequate steps to stop violence and crime and hold those responsible accountable. There must be a preference for peaceful means: international diplomacy, negotiation and mediation, along with humanitarian assistance. If given consent, a United Nations peacekeeping operation must strive to bring to an end the deliberate action or inaction of the Government, and obtain credible guarantees that the Government will assume and/or resume its responsibility to protect.

82. If the Government manifestly demonstrates its refusal or inaction to stop the crimes, collective action should be urgently considered. Under the third pillar of the strategy for the implementation of the responsibility to protect, Member States have the responsibility "to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter of the United Nations, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (see A/66/874-S/2012/578, para. 2). Such collective action may include sanctions, embargoes and restrictions on cooperation. Ultimately, the use of force can be authorized by the Security Council. In situations in which there is an imminent or ongoing killing of civilian populations, measures must be established to enable appropriate and rapid intervention.

83. There are also promising intergovernmental initiatives. Global Action against Mass Atrocity Crimes is a State-led initiative to prevent mass atrocity crimes and focuses on prevention at the national and regional levels. It aims to support States engaged in preventing mass atrocity crimes and to assist those that are considering the development of preventative strategies. The initiative also serves as a platform for the exchange and dissemination of learning and good practice and works closely with some key civil society organizations.

84. International actors can confront significant challenges in retaining the essential support of a Government in delivering assistance while also responding to

serious rights violations. In Sri Lanka, the United Nations development and humanitarian branches were unable to fully address the United Nations political and human rights priorities. Failures identified included a United Nations system that lacked an adequate and shared sense of responsibility for human rights violations; an incoherent internal United Nations crisis-management structure which failed to conceive and executer a coherent strategy in response to early warnings and subsequent human rights and humanitarian law violations against civilians; the ineffective dispersal of United Nations Headquarters structures to coordinate United Nations action and to address international human rights and humanitarian law violations across several different United Nations Headquarters entities in Geneva and New York; a model for United Nations action in the field that was designed for a development rather than a conflict response; and inadequate political support from Member States as a whole.[27]

85. The Sri Lanka experience contributed to the development of the Secretary-General's "Rights up front" initiative which seeks to ensure better organizational preparedness to meet the challenges of safeguarding human rights and protecting civilians in complex crises.

VIII. Essential elements of post-violence responses and transitional justice

86. Essential to immediate post-violence responses and the prevention of further violence is the provision of full assistance to affected communities, including humanitarian assistance, the institution of appropriate security measures to ensure protection, and a full and independent investigation of incidents of violence. Such measures must be urgently implemented, where necessary with the assistance of regional bodies and the international community where the capacity of governments is inadequate or where they are implicated as perpetrators of violence. In the short term, dialogue with communities is vital to understanding the needs of affected communities and to building confidence. Measures to ensure the secure return to their homes of those displaced by violence must be undertaken at the earliest opportunity to avoid long-term displacement.

87. Accountability and tackling impunity for violent crimes are essential to ensuring justice and post-violence reconciliation. Transitional justice requires that the truth about the past be investigated and told, the provision of compensation for material and immaterial losses, the return to societal stability and the restoration of full respect for human rights. Perpetrators on all sides must be held accountable as a means of rebuilding societies damaged and fractured by violence and as a deterrent to further violence. Justice and accountability may be achieved in various ways, which can include truth, justice and reconciliation processes; commissions of inquiry; judicial processes; and incorporation of traditional forms of resolution and reconciliation. Such mechanisms have demonstrated an ability to begin a process of healing the wounds inflicted on communities and societies in such cases as Rwanda, South Africa and Northern Ireland.

[27] Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka. Available from www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf.

88. Fact-finding and investigations commissions established at the earliest possible stage can play an essential role in stopping the escalation of further violence. States in which violence and/or atrocities targeted at minority groups have previously taken place should establish violence prevention and response policies and strategies that can rapidly be employed to avert the threat of renewed violence or can work in a wider policy context to prevent violence. Fostering community resilience and remembering and honouring the victims can help States to strengthen social cohesion and prevent atrocities from occurring again. The creation of museums and memorial places to pay tribute to the victims of all sides are important initiatives to that end.

89. In Colombia, the Office of the Ombudsman created an early warning and risk assessment system (Sistema de Alerta Temprana) to protect Afro-Colombian communities under threat. Under the system, community advocates deployed to areas in which the presence of authorities is weak identify and report on credible threats. Their alerts are assessed by security forces and civil institutions which determine if protection measures, including a military presence, bodyguards and relocations, are required. One of the concerns expressed is that not all threats are taken seriously and that some measures are imposed without full consultation.

90. In 2008, Kenya established the National Cohesion and Integration Commission, following ethnically-based violence after the 2007 elections. The Commission is entrusted with facilitating and promoting a Kenyan society whose values are harmonious and non-discriminatory, with the aim of achieving peaceful coexistence and integration. The Commission conducts activities to combat discrimination and enhance tolerance and management of diversity, and advises the Government in the promotion of harmony and peaceful coexistence.

IX. Conclusions and recommendations

91. **Protection of disadvantaged and vulnerable minority groups facing violence is required as much as ever. Continuing violent incidents suggest that only limited advances have been made in employing indicators, protection strategies and methodologies at the national, regional and international levels and that much remains to be done to protect vulnerable minority groups.**

92. **Violence has far-reaching impacts on individuals, communities and societies. The immediate impact may be death, injury, destruction of property, displacement and sexual violence against minorities. The longer-term impact on minorities, their enjoyment of human rights and fundamental freedoms and their relations with other groups in society may last for generations after incidents of violence.**

93. **Gross inequalities and persistent poverty are frequently elements in the complex social, economic and geopolitical equations which lead to conflict and violence. Discrimination is a cause and a consequence of inequality and poverty and, under certain circumstances, including where land and resources are scarce, results in communities made vulnerable to violence. Addressing inequality and promoting equitable societies are key conflict and violence prevention measures.**

94. **Predicting and preventing violence must not remain an academic exercise. Post-violence analysis has helped to develop indicators and improve the potential to raise alarms and trigger early warning mechanisms; however, analysis conducted after violence has begun means that the action taken is often too little and too late. The lessons of past atrocities must be put into practice when the warning signs are clear and, even when they are not, States must become more capable of responding to them.**

95. **The comprehensive implementation of minority rights, non-discrimination and equality standards constitutes an important foundation for the prevention of violence against minority communities and helps to establish the conditions for stability and harmonious relations among population groups. States should implement fully the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other regional and international standards.**

96. **Mechanisms to ensure dialogue, consultation and participation, the fundamental principles of minority rights, should be established to assist States in understanding the situations of minorities, their issues and concerns. Where violence has previously taken place, such mechanisms are particularly essential, including in post-conflict and post-violence reconciliation and peacebuilding processes.**

97. **Establishing institutions for the protection of minority rights and ensuring attention to minority rights within existing national and human rights institutions are essential violence prevention measures. Such institutional attention facilitates early warning and early response and the establishment of the appropriate policy frameworks and violence prevention strategies that are essential to the prevention of violence.**

98. **The Special Rapporteur considers that violence against minorities must constitute a high priority for States, regional bodies and the international community, as well as civil society. She notes that the seventh session of the Forum on Minority Issues, to be held in Geneva on 25 and 26 November 2014, will be dedicated to this issue and will provide an appropriate venue for stakeholders, including minorities, Member States, regional bodies, United Nations bodies and mechanisms, specialized agencies and civil society, to hold a dialogue on the subject and produce recommendations for presentation to the Human Rights Council.**

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Rights of indigenous peoples, including their economic, social and cultural rights in the post-2015 development framework

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly, in accordance with Human Rights Council resolution 24/10, the report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz.

* A/69/150.

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Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples

Summary

The Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolution 24/10, presents this, her first report, to the General Assembly. Given that the Assembly is currently in the process of reviewing and adopting the post-2015 development agenda, including global sustainable development goals, the Special Rapporteur takes this opportunity to provide some thoughts on this crucial issue for indigenous peoples, in the hope that these comments may help guide Member States and others as they reflect on development priorities.

The progressive achievement the economic, social and cultural rights of indigenous peoples poses a double challenge to the dominant development paradigm: on the one hand, indigenous peoples have the right to be fully included in, and to benefit from, global efforts to achieve an adequate standard of living and to the continuous improvement of their living conditions. On the other, their right to define and pursue their self-determined development path and priorities must be respected in order to safeguard their cultural integrity and strengthen their potential for sustainable development. These two concerns are addressed through the complementary and cross-cutting principles of non-discrimination and self-determination, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, as well in the full range of international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights.

The shortcomings of the Millennium Development Goals to embody human rights and to achieve indigenous peoples' economic, social and cultural rights must inform the new generation of sustainable development goals. Key areas to be addressed include: the diversification of development paradigms and strategies; the construction of new models for partnerships with indigenous peoples; the establishment of monitoring mechanisms through disaggregation of data and monitoring of key attributes pertaining to the right to self-determination; the acknowledgment of — and action to combat — discrimination against indigenous peoples in both rich and poor countries across the globe; delivery of culturally appropriate social services; respect for traditional occupations and labour rights; the design of effective measures to overcome discrimination against indigenous women; and improved governance in the context of national and international development initiatives, including mechanisms to ensure consultation, participation and free, prior and informed consent.

As the world prepares to define the next generation of sustainable development goals and the post-2015 development agenda to be achieved by 2030, the Special Rapporteur highlights the need to look back at the experiences generated in the context of the framework and implementation of the Millennium Development Goals in order to avoid repeating mistakes, learn from constructive approaches and ensure that the next generation of global development goals and related targets and indicators are developed on the basis of an informed background. The Special Rapporteur offers a series of recommendations for addressing these concerns in the context of the forthcoming policies and strategies to reach global sustainable development goals.

I. Introduction

1. The Special Rapporteur of the Human Rights Council on the rights of indigenous peoples submits the present report to the General Assembly pursuant to Human Rights Council resolution 24/10. This is the first report by Victoria Tauli-Corpuz, who assumed her mandate on 2 June 2014. The Special Rapporteur would like to thank the Human Rights Council for entrusting her with this important task and she commits herself to carrying out this mandate in an impartial and constructive manner. She also would like to express her gratitude to the numerous indigenous groups and organizations that have already engaged with her as she assumed her mandate and affirms her strong commitment to her role as Special Rapporteur, acknowledging, with humility, the responsibility it represents.

2. The present report focuses on indigenous peoples' economic, social and cultural rights in the development context, and specifically within the post-2015 development framework. As noted in her first report to the Human Rights Council (A/HRC/27/52), the economic, social, cultural and environmental rights of indigenous peoples will be a principal thematic focus of the Special Rapporteur's three-year mandate. Given that the General Assembly is currently in the process of reviewing and adopting the post-2015 development agenda, which includes work towards the adoption of global sustainable development goals, the Special Rapporteur is taking this opportunity to provide some thoughts on this crucial issue for indigenous peoples, in the hope that these comments may help guide Member States and others as they reflect on development priorities.

3. The report offers an overview of the human rights framework and of concerns related to the development of indigenous peoples: part II provides a background of the historical context; part III details relevant human rights standards, which should be viewed in the light of the cross-cutting rights of indigenous peoples to non-discrimination and self-determination; part IV describes lessons learned and identifies obstacles and advances in achieving the economic, social and cultural rights of indigenous peoples; and part V contains brief conclusions and recommendations for addressing these concerns in the context of the forthcoming policies and strategies to reach global sustainable development goals.

II. The historical context

4. The Special Rapporteur notes that the concept of development has always had an ambiguous connotation in the context of indigenous peoples. Historically, in the era of colonization and nation-building, development largely implied the submission of indigenous peoples, who had previously enjoyed their right to self-determination. Seen through the eyes of the colonizers and rulers, indigenous peoples were hardly considered human beings, and many were exploited as forced or underpaid labourers in plantations and mines and in other resource-extraction activities. In other cases, indigenous peoples were pushed to marginal areas, while more productive lands and easily accessible resources benefitted the rulers and dominant groups. The most egregious example of this was the taking of indigenous peoples' lands and resources for the benefit of the majority — for their economic growth and in other terms — with devastating impacts on a range of their human rights.

5. In most cases, the original development paths of the indigenous peoples were disregarded and disrupted, and "development" was conceived as a one-dimensional process, measured in terms of economic growth and increase in gross national product (GNP). This development model failed to take into account the diversity of human livelihoods, cultures and concepts of well-being. The Special Rapporteur also notes that this led to a situation of double discrimination against indigenous peoples: not only were they deprived of the economic and social benefits of contemporary development, which was often carried out at their expense, at the same time their cultures, languages and production systems were stigmatized as backward, primitive and uncivilized.

6. These misperceptions were still dominant in the late 1950s, when the International Labour Organization (ILO), on behalf of the United Nations-system, adopted Convention No. 107 on indigenous and tribal populations. This Convention was the first attempt to codify the international obligations of States in respect of indigenous peoples, and it is a clear reflection of the development discourse at the time it was adopted. While the Convention recognized indigenous peoples as human being with basic rights that should be protected, they were also understood as being in a "deficit position", that is, they were considered as being at a less advanced stage than other sectors of society. The Convention thus called on States to gradually assist indigenous peoples to fully integrate into the national community. In other words, through development, they would cease to exist as distinct peoples, the goal being equality of rights and opportunities, but without the diversity of identities, culture and development paths.

7. During the 1970s and 1980s, this perception was forcefully challenged by indigenous peoples, who manifested their determination to maintain and pass on to future generations their unique cultures and distinct social, governance, production and knowledge systems. This determination led, in 1989, to the adoption of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which explicitly aims, in its preamble, at "removing the assimilationist orientation of the earlier standards".

8. The claim of indigenous peoples to self-determined development was further reinforced in the 1992 Rio Declaration on Environment and Development, which acknowledges indigenous peoples' "vital role in environmental management and development because of their knowledge and traditional practices" (principle 22). The Rio Declaration further calls on States to recognize and duly support indigenous peoples' identity, culture and interests and to enable their effective participation in the achievement of sustainable development.

9. Finally, through the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the global community at large acknowledged indigenous peoples' right to development in accordance with their own aspirations and needs. In its preamble, the Declaration recognizes that "indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests". It thus guarantees, in a series of provision, the right of indigenous peoples to development in accordance with their own aspirations and needs, and connected with other social, economic, and cultural rights, as noted in more detail in part III, below.

10. In spite of such progress, the Special Rapporteur notes that there is still a considerable implementation gap with regard to the effective realization of these rights. The long history of colonization and attempts at assimilation of indigenous peoples has continuing effects today. In nearly all of the countries in which they live, indigenous peoples fare worse than non-indigenous sectors of the population in terms of their development, including levels of poverty, education, health, unemployment, housing conditions, clean water and sanitation. Furthermore, in a number of States, indigenous peoples' development strategies and aspirations are still met with negative stereotyping and their contributions in terms of biodiversity conservation, ecosystem services and sustainable food production, for example, are often not well understood.

11. Experiences and lessons learned from the global and national efforts to reach the Millennium Development Goals have shown that indigenous peoples are still frequently excluded from mainstream development efforts and face severe obstacles when attempting to follow their own development paths. In the following sections, the Special Rapporteur draws attention to these lessons learned, underlining the importance of taking them into account in the efforts to reach agreement on the sustainable development goals and the post-2015 development agenda.

III. Economic, social and cultural rights as they apply to indigenous peoples

A. Complementarity of instruments: universality of duties

12. As noted above, development measures have historically been exclusive, carried out at the expense of indigenous peoples or aimed at their assimilation. These trends have been gradually, albeit not sufficiently, reversing over past decades. The movement away from exclusive and assimilationist development is reflected in the international human rights framework overall, and especially in the specific human rights standards that apply to indigenous peoples, such as the Declaration on the Rights of Indigenous Peoples. As has been emphasized by the previous Special Rapporteur (see A/68/317, para. 70), the Declaration does not create new or special rights or privileges for indigenous peoples, but is to be understood as a remedial instrument that provides the necessary minimum standards for indigenous peoples to be able to enjoy the full range of their human rights and fundamental freedoms without any discrimination.

13. This is true in the context of economic, social and cultural rights, in particular as reflected in the International Covenant on Economic, Social, and Cultural Rights, a human rights instrument of universal applicability. The Declaration mirrors universal human rights contained in this and other instruments, and contextualizes these to the situation of indigenous peoples by emphasizing their collective aspects, building on the complementary principles of non-discrimination and self-determination, as noted below. Hence, the Special Rapporteur stresses that the duty of States to respect, protect and fulfil indigenous peoples' economic, social and cultural rights is based not only on their commitment to specific instruments on indigenous peoples' rights, such as the Declaration and ILO Convention No. 169, but is an integral element of their duty under the International Convenant and other applicable human rights instruments.

14. The Special Rapporteur appreciates the attention paid to the situation of indigenous peoples by the Committee on Economic, Social and Cultural Rights and other treaty monitoring bodies, procedures and mechanisms, including human rights monitoring bodies at the regional level, and underlines her commitment to work in a collaborative manner to further strengthen the complementarity between those holding mandates on general human rights and those holding specific mandates with regard to indigenous peoples' rights.

B. Self-determination and non-discrimination as cross-cutting principles

15. Central to the contextualization of universal human rights to the situation of indigenous peoples are the rights to non-discrimination and self-determination. These rights are enshrined in a broad range of human rights instruments of general applicability, but are featured throughout the Declaration, including in relation to economic, social and cultural rights. The complementarity of these two principles are captured in the preamble of the Declaration, which affirms "that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such".

16. In the context of development, contemporary standards related to indigenous peoples have a dual overarching aim. On the one hand, they strive to effectively address discrimination against indigenous peoples so they can fully benefit from development efforts to achieve an adequate standard of living. On the other hand, the standards aim to ensure respect for their right to define and pursue their self-determined development paths in order to safeguard their cultural integrity and strengthen their potential for sustainable development. Thus, the international framework pursues these two complementary aims through the cross-cutting principles of non-discrimination and self-determination.

17. The right to non-discrimination in the context of economic, social and cultural rights aims at ensuring substantial equality in the progressive achievement of these rights. It should be noted that the principle of non-discrimination has two dimensions: to ensure equality for all indigenous individuals, both men and women, and for indigenous peoples as collectives. This is made explicit in the Declaration, which stipulates that "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity" (article 2), and further that all rights and freedoms in the Declaration "are equally guaranteed to male and female indigenous individuals" (article 44).

18. For its part, the right to self-determination in the context of economic, social and cultural rights is intended to combat historical assimilation and ensure that indigenous peoples can maintain their cultural integrity and pursue their own aspirations for self-determined development. Beyond this rights-based goal, increasing indigenous peoples' self-determination over their development has been shown to have significant practical benefits across a range of indicators, that is, indigenous peoples who are able to pursue their own development priorities and strategies fare better than those who cannot. Further discussion about the need for self-determined development for indigenous peoples, as well as the identification of ongoing obstacles and advancements made in this regard, is included in section IV, below.

19. The principles of self-determination and non-discrimination permeate the broad range of economic and social rights. For example, in the context of health, the practical implications of these general principles are that health services should not only aim at closing the gaps in health outcomes between indigenous and non-indigenous individuals, but also incorporate and strengthen the traditional medicine and health practices of indigenous peoples. In the area of education, general and contextualized standards guarantee the equal rights of indigenous individuals to education without discrimination, as well as the right to establish their own educational institutions, in conformity with their own convictions. In addition, the right to work enshrined in various instruments of general applicability encompasses the right of indigenous peoples to pursue traditional occupations, such as sustainable pastoralism, hunting, gathering, fishing and shifting cultivation, as well as equal access to pursue such occupations, that is, indigenous peoples should enjoy "access to credit, market facilities, agricultural extension and skills training facilities on an equal footing with other parts of the population".[1]

20. The Special Rapporteur notes that cultural rights, in particular, are of central significance to indigenous peoples and almost by definition embody the corollary rights to non-discrimination and, especially, to self-determination. Furthermore, cultural rights are part and parcel of a range of other substantive rights for indigenous peoples. The Committee on Economic, Social and Cultural Rights interprets "culture" as a broad, inclusive concept encompassing all manifestations of human existence and that it "shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities".[2]

21. The Committee notes that the right "to take part in" culture life enshrined in article 15(1) of the International Covenant on Economic, Social and Cultural Rights covers, inter alia, the individual and collective rights to: choose one's own identity; engage in one's own cultural practices; speak the language of one's choice; know and understand one's own culture and that of others; receive quality education and training with due regard for cultural identity; follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions; and be involved in creating the spiritual, material, intellectual and emotional expressions of the community.[3]

22. The Special Rapporteur finds that such an inclusive understanding of the right to take part in cultural life is consonant with the holistic worldview of indigenous peoples. She reaffirms that the right to cultural life, in the context of indigenous peoples, is underpinned by the right to self-determination as an indispensable condition for the continued existence of their cultural life.

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[1] See *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A Guide to ILO Convention No. 111*, ILO, 2007.

[2] E/C.12/GC/21, para. 13.

[3] The Committee on Economic, Social and Cultural Rights has also highlighted that, in line with their obligations to protect cultural rights "States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights" (E/C.12/GC/21, paras. 15 and 37).

C. The relevance of effective and special measures to achieve indigenous peoples' economic, social and cultural rights

23. A number of countries in which indigenous peoples live face enormous development challenges, and clearly indigenous peoples may be one group among many within a country experiencing difficulties in this regard. Nevertheless, indigenous peoples face distinct challenges, and measures to address social and economic disparities must be differentiated from measures targeting other disadvantaged groups.

24. In order to overcome situations of discrimination, international human rights standards generally provide for the adoption of positive or special measures to ensure effective and substantial equality. With this in mind, the Declaration was premised on the concern that indigenous peoples have suffered from injustices that prevent them from exercising their right to development in accordance with their own needs and interests. Hence, the Declaration has essentially a remedial purpose, and, in the words of the previous Special Rapporteur, "aims at repairing the ongoing consequences of the historical denial of the right to self-determination and other basic human rights affirmed in international instruments of general applicability".[4]

25. The Declaration, in particular with regard to economic, social and cultural rights, points out in numerous articles the need for States to adopt "effective" or "specific" measures or to take "necessary steps" to overcome discrimination and ensure the progressive achievement of these rights. In general, article 21(2) stipulates that "States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their [indigenous peoples'] economic and social conditions". More specifically, the Declaration calls for: measures to: safeguard the cultural values and identity of indigenous peoples and prevent their forced assimilation or integration (article 8(2)); protection of their right to revitalize, use, develop and transmit their cultural heritage (article 13(1 and 2)); ensured access to education in their own culture and their own language (article 14); protection of indigenous children from economic exploitation and child labour (article 17(2)); protection of indigenous women and children against violence and discrimination (article 22(2)); and the right to achieve the highest attainable standard of physical and mental health (article 24(2)).

26. From her own experience, the Special Rapporteur reported on concerns expressed that such affirmative measures to address the particular situation of indigenous peoples would constitute an act of discrimination against other sectors of society. In that regard, the Special Rapporteur finds it useful to draw attention to the comprehensive body of authoritative interpretation of human rights standards, which explain the non-discriminatory nature of special measures, if these are adopted specifically to overcome discrimination.

27. For example, the Committee on the Elimination of Racial Discrimination, in its general recommendation No. 32, underlines that the "term "non-discrimination" does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, in other words, if there is an objective and reasonable justification for differential treatment. To treat persons or groups whose situations are objectively different in an equal manner

[4] A/HRC/9/9, para. 36.

would constitute discrimination in effect, as would the unequal treatment of persons whose situations are objectively the same.[5] The Committee thereby concluded that "special measures are not an exception to the principle of non-discrimination but are integral to its meaning".[6]

28. Following this reasoning, the Special Rapporteur emphasizes that there can be no doubt about the pertinence and necessity of adopting special measures to overcome discrimination against indigenous peoples, which is reflected in their marginalized situation of in all parts of the world, and to assist them in progressively achieving their economic, social and cultural rights.

29. Given that non-discrimination in the context of indigenous peoples has both an individual and a collective dimension, and that non-discrimination and self-determination are complementary and intertwined principles that permeate economic, cultural and social rights as they apply to indigenous peoples, special measures should, accordingly, not only address the socioeconomic gaps between the indigenous and non-indigenous sectors of society but also remove discriminatory barriers to the exercise of their right to self-determined development and cultural integrity.

IV. Lessons learned from current efforts to achieve the economic, social and cultural rights of indigenous peoples

A. Failure of the Millennium Development Goals to embody human rights obligations, including the rights of indigenous peoples

30. While the rights of indigenous peoples are clearly defined by the Declaration on the Rights of Indigenous Peoples, and an increasing body of knowledge regarding its implications and operationalization is being developed, huge implementation challenges remain, including in the context of economic, social and cultural rights.

31. This implementation gap is sadly reflected by the failure of the international community to use the Millennium Development Goals as a vehicle to overcome discrimination and achieve substantial equality for indigenous peoples in the context of their development. The eight quantifiable Goals, which were to be achieved by 2015, were derived from the Millennium Declaration, adopted by the General Assembly in September 2000. Indigenous peoples, and civil society in general, were not formally involved in the formulation of the Goals and neither the Goals nor the related targets or indicators have any specific reference to the situation of indigenous peoples.

32. This omission raised the alarm both among indigenous peoples and within the United Nations system. In 2005, the Inter-Agency Support Group on Indigenous Issues, which comprises more than 30 United Nations agencies, funds and programmes and international organizations, expressed its concern that this omission of indigenous peoples "... may in fact adversely impact their communities by deepening the discrimination faced by indigenous peoples and by accelerating

[5] CERD/C/GC/32, para. 8.

[6] Ibid, para. 20.

the exploitative use of their land and resources in the name of progress and economic development".[7] Furthermore, the United Nations Permanent Forum on Indigenous Issues dedicated its 2005 and 2006 sessions to a thorough discussion of the Millennium Development Goals, and issued a comprehensive set of detailed recommendations to States, the United Nations system and indigenous peoples in order to make the strategies adopted to achieve the Goals responsive to the needs and aspirations of indigenous peoples.

33. With only one year remaining to achieve the Millennium Development Goals, and in spite of the concerted efforts by numerous actors at a global scale, the Special Rapporteur concludes that many of the concerns expressed with regard to the Goals were sadly confirmed. Based on all available data at the country level regarding the social and economic situation of indigenous peoples, it is evident that the Goals did not fundamentally address or resolve the socially and economically disadvantaged position of indigenous peoples.

34. As the world prepares to define the next generation of sustainable development goals and the post-2015 development agenda, to be achieved by 2030, the Special Rapporteur highlights the need to look back at the experiences generated in the context of the framework and implementation of the Millennium Development Goals in order to avoid repeating mistakes, learn from constructive approaches and ensure that the next generation of global development goals and related targets and indicators are developed on the basis of an informed background.

B. Obstacles and advancements in achieving economic, social and cultural rights for indigenous peoples

35. The efforts to reach the Millennium Development Goals, along with other recent development efforts to progressively achieve economic, social and cultural rights, have revealed a series of weaknesses related to the scope, the focus, governance and operational modalities of such efforts, but have also provided promising examples and experiences, which can be used to inspire future efforts. A non-exhaustive list of main obstacles and advancements to the full realization of the rights of indigenous peoples in the context of development are reviewed in this section. It is necessary to take stock of these obstacles and to develop measures to overcome them as part of efforts to achieve sustainable development in the context of the post-2015 global development agenda.

Self-determined development

36. Complementary to the challenge of ensuring substantial equality for indigenous people with regard to common socioeconomic indicators is the need to ensure equality for indigenous peoples with regard to their rights to develop priorities and strategies for their self-determined development, as enshrined in the Declaration on the Rights of Indigenous Peoples (article 23) and ILO Convention No. 169 (article 7(1)). History is full of examples of development interventions that have either failed or undermined the institutions, resources and cultures of indigenous peoples. These interventions tended to be preconceived in an evolutionist and a narrowly defined monetary and economic growth-oriented

[7] E/C.19/2005/2; annex III, para. 3.

development tradition, which ignored the traditional knowledge, cultural and natural resources and concepts of well-being of indigenous peoples.

37. One such example is the undervaluing of the traditional livelihoods and occupations of indigenous peoples, such as traditional fishing practices, hunting and gathering, pastoralism and shifting cultivation. In all parts of the world, indigenous peoples who are engaged in such sustainable but non-sedentary subsistence activities face overwhelming threats to their collective rights to lands, territories and resources, which form the basis of their livelihoods as well as their culture and identity. As observed by the Inter-Agency Support Group on Indigenous Issues "... national development policies often consider traditional livelihood activities as no longer relevant and sometimes seek to discourage them, even in the absence of viable alternatives".[8] The Special Rapporteur observes that this situation persists despite the fact that the dominant development strategies have led to immense challenges related to the adverse effects of climate change, loss of biodiversity, environmental degradation, financial instability, increasing inequalities and unemployment and social crises in many countries.

38. In contrast, indigenous peoples' traditional knowledge and practices for sustainable low-carbon development, ecosystem management, biodiversity conservation and climate change adaptation provide important resources not only for indigenous communities but also for the global community, and there is ample evidence supporting this assertion. Studies show that: pastoral systems based on mobility and diversity of livestock are supportive of a healthy ecosystem and are complementary to wildlife conservation; there is a considerable overlap between indigenous peoples' territories and areas of high biological diversity; and a considerable part of the global biodiversity survives within indigenous and community-conserved areas. Hence, strengthening indigenous peoples' own strategies for sustainable development is not only key to achieving their economic, social and cultural rights, it is also an indispensable element in global efforts to achieve sustainable development.

39. What is more, according to various studies, programmes that maximize indigenous self-determination tend to perform better than those controlled by the State or by other external actors. The Harvard Project on American Indian Economic Development has diligently documented numerous examples of successful indigenous-run development programmes and has concluded that when Native nations make their own decisions about what development approaches to take, they consistently outperform external decision makers — on matters as diverse as governmental form, natural resource management, economic development, health care and social service provision.[9] Thus, for sustainable development to take root, it is necessary to promote the conditions under which indigenous decision-making is maximized and to ensure that development models and programmes targeted towards indigenous peoples are grounded in their own cultures and ways of doing things, as discussed below.

[8] See Inter-Agency Support Group, Thematic paper towards the preparation of the 2014 World Conference on Indigenous Peoples, "Indigenous peoples' access to decent work and social protection" (2014), available at: http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20paper_%20Employment%20and%20Social%20Protection%20-%20rev1.pdf.

[9] See http://hpaied.org.

40. Nevertheless, as described by the previous Special Rapporteur, the externally designed and managed model for development for indigenous peoples, especially in the area of extractive resources, is still the "standard scenario".[10] This has led to a common perception among indigenous peoples that "no apparent positive impact is to be had from these operations, which are seen more as a top-down imposition of decisions taken in a collusion of State and corporate interests than the result of negotiated decisions in which their communities are not directly involved".[11] To counter this situation, the former Special Rapporteur pointed out the need for States and business enterprises to reverse the standard scenario and to build new models of partnership for resource extraction and development, which should preferably be conceived through indigenous peoples' own initiatives and enterprises.[10]

41. The Special Rapporteur notes that, at a minimum, third-party development initiatives should seek to establish rights-centred and equitable agreements and partnerships with indigenous peoples. Such partnerships are most likely to be successful if they: (a) are developed within the framework of State regulatory regimes that adequately protect indigenous peoples' rights, including the extraterritorial activities of private companies; (b) ensure participation of indigenous peoples and respect for their rights in strategic State planning from the national to the local levels for resource extraction and development; (c) ensure that companies comply with their responsibility to respect indigenous peoples' rights and perform related due diligence to assess and avoid any adverse impact; and (d) ensure fair and adequate consultation and negotiation procedures, aimed at obtaining free, prior and informed consent.

42. In this context, the Special Rapporteur notes with interest the adoption by the Human Rights Council, on 26 June 2014, of resolution 26/9, entitled "Elaboration of an international legally binding instrument on Transnational Corporations and other Business Enterprises with respect to Human Rights". By its resolution 26/9, the Council decided to establish an open-ended intergovernmental working group mandated "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises".

43. This could be a much needed step towards ensuring that gross human rights violations against indigenous peoples that involve transnational corporations and business enterprises become a thing of the past, thereby paving the way for the construction of new mutually beneficial partnerships between businesses and indigenous peoples.

44. The Special Rapporteur recommends that the participation of indigenous representatives be ensured and supported as part of the process of establishing the open-ended intergovernmental working group. The Special Rapporteur looks forward to contributing to this process in any way she can, including by collaborating closely with the working group and by facilitating dialogue among the parties, if requested.

45. At the same time, the Special Rapporteur also expects that the implementation of the above-mentioned resolution will not derail the work already carried out to implement the Guiding Principles on Business and Human Rights that has taken

[10] See A/HRC/24/41.

[11] A/HRC/18/35, para. 65.

place over the past three years, including work carried out by the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Forum on Business and Human Rights. In this context, there has been some progress in terms of raising the concerns of indigenous peoples, especially in relation to extractive industries. The participation of indigenous representatives in the processes of the Working Group and the Forum should continue and financial support should be provided for this purpose.

46. The Special Rapporteur also emphasizes the importance of ensuring that the sustainable development goals and the post-2015 development agenda are inclusive and reflective of indigenous peoples' development aspirations, bringing together economic, social, cultural, environmental and climatic concerns, to be addressed in an integrated manner.

Invisibility of the situation of indigenous peoples and disaggregated data

47. The Special Rapporteur is deeply concerned that the particular situation of indigenous peoples often remains invisible within national statistics. This is true in many developing countries, which often have weak institutional capacities for data collection. Further complicating this situation is the fact that in many of these countries, particularly in Africa and Asia, the formal identification and recognition of indigenous peoples is still pending, and disaggregation of data based on ethnicity may be considered, for various reasons, to be controversial. Given the importance of this issue, the Permanent Forum on Indigenous Issues has made it an ongoing area of focus, and has issued numerous recommendations for States, indigenous organizations and United Nations agencies, in particular the Statistics Division of the Department of Economic and Social Affairs, to collaborate on data disaggregation and collection.[12]

48. The existence of relevant information is a vital precondition for devising adequate policy responses for addressing inequalities and for monitoring the effectiveness of measures to overcome discrimination, both within and between countries, as well as for identifying additional gender-based discrimination. In this context, the Special Rapporteur commends the efforts of the Economic Commission on Latin America and the Caribbean (ECLAC) to "democratize information". With the support of a number of United Nations agencies, donor agencies and private funders, the Commission has established a comprehensive database, which provides sociodemographic data on indigenous peoples and Afro-descendants in the region, including data disaggregated by sex and age, as well as data on internal migration, health, youth and the territorial distribution of inequalities.[13] The basis of much of this impressive work is the inclusion by most countries in Latin America of an "indigenous identifier" into their 2000 census round, thus building data through the self-identification of individuals as being a member of an indigenous community.[14]

49. The Special Rapporteur notes that some individual countries have made similar progress with regard to disaggregation of data in their population and

[12] See E/2007/43-E/C.19/2007/12, para. 123.

[13] See the ECLAC database at: http://www.cepal.org/cgi-bin/getprod.asp?xml=/celade/noticias/paginas/0/36160/P36160.xml&xsl=/celade/tpl/p18f.xsl&base=/celade/tpl/top-bottom_ind.xsl.

[14] See Sistema de Indicadores Sociodemográfico de Poblaciones y Pueblos Indígena de América, CELADE/CEPAL — Fondo Indígena: Guía para el usuario, available at: http://celade.cepal.org/redatam/PRYESP/SISPPI/SISPPI_notastecnicas.pdf.

housing censuses, examples of which are noted throughout the specific country reports of the previous Special Rapporteurs. This information has been and will be invaluable as a basic requirement for monitoring the impact of the upcoming sustainable development goals.

50. However, one limitation of the disaggregation of data collected against common socioeconomic indicators is that such data may essentially serve to monitor discrimination against indigenous individuals in terms of their access to and achievement of social and economic rights while providing little information on the range of attributes of these rights pertaining to the right to self-determination. For example, disaggregated data may show a gap in educational outcomes, but will not supply information as to whether the education provided was culturally appropriate, or whether the student was able to learn in his or her own language, for example. Likewise, a simple registration of increased income may be read as indicating positive progress, even in situations where indigenous peoples have been forced to leave a more subsistence-oriented economy.

51. At the most basic level, the indicators should assist with the detection of discrimination, inequality and exclusion, and should allow for comparisons to be made between indigenous peoples and other population groups. Furthermore, there is a need for specific indicators that capture essential aspects of self-determined development, such as status and trends in the development and use of indigenous languages, security of tenure with regard to lands, territories and resources and the recognition of indigenous customary law and autonomous governance institutions. Above all, it is essential that indigenous peoples participate in defining the issues to be addressed and the indicators used, and that indigenous peoples' own views on well-being and their visions for the future are taken into account.

52. The Special Rapporteur will continue her work on practical approaches to assessing progress in the realization of indigenous peoples' rights, and she looks forward to collaborating with Governments, indigenous peoples, United Nations agencies and other interested parties in identifying good practices within this field, which should be reflected in the framework to monitor the forthcoming sustainable development goals.

Marginalization of indigenous peoples in developed countries

53. National statistics in middle- and high-income countries may also hide the persistent social and economic marginalization of indigenous peoples. The previous Special Rapporteurs have highlighted this situation in their reports, for example, on the situation of indigenous peoples in Australia (A/HRC/15/37/Add.4), New Zealand (A/HRC/18/35/Add.4), the United States of America (A/HRC/21/47/Add.1) and Canada (A/HRC/27/52/Add.2). This concern has also been repeatedly raised by the Permanent Forum on Indigenous Issues. For example in the context of discussions related to the Millennium Development Goals, the Forum pointed out that indigenous peoples in developed countries "suffered from significant disparities in the enjoyment of economic, social and cultural rights. Such disparities tended to be masked at the international level owing to the lack of disaggregated data and the high level of enjoyment of such rights by the non-indigenous population compared with indigenous peoples".[15]

[15] E/2006/43-E/C.19/2006/11, para. 6.

54. Another concern consistently raised by indigenous peoples in developed countries is that they generally have limited access to financial and technical assistance from international cooperation. Such cooperation is guaranteed in article 39 of the Declaration on the Rights of Indigenous Peoples, which states that indigenous peoples "have the right to have access to financial and technical assistance ... through international cooperation". However, given the rules for eligibility of official development assistance, which is largely based on gross national income, indigenous peoples living in developed countries are often denied such support.[16] One commendable example of how to overcome this limitation is presented in the Strategy for Danish Support to Indigenous Peoples, which stipulates that the general eligibility criteria for development aid recipients is waved in the context of indigenous peoples, as they often live in "poverty pockets," even in countries that are not among the poorest.[17]

55. The Special Rapporteur hopes that more agencies will find ways and means to assist indigenous peoples, as needed, in all parts of the world, and expresses her hope that the universality of the proposed sustainable development goals will contribute to highlighting and addressing existing inequalities in all counties across the globe.

56. At the present time, in countries all around the world, there are numerous established programmes targeted at bettering the social and economic situations of indigenous peoples, many of which have demonstrated notable successes. The previous Special Rapporteurs have discussed some of these important governmental efforts to address the concerns of indigenous peoples relating to, inter alia, the establishment of mechanisms for consultation, languages and education, health, the administration of justice and economic development. However, they have also pointed out that, overall, more still needs to be done (see, for example, A/HRC/21/47/Add.1, paras. 67-71; A/HRC/18/35/Add.3, paras. 57-63).

Culturally appropriate social services

57. An essential element of overcoming discrimination and achieving the economic, social and cultural rights of indigenous peoples is the design and delivery of adequate social services, particularly within the education and health sectors. As noted above and further here, culturally appropriate services are not only required by international human rights standards, especially as articulated in the Declaration on the Rights of Indigenous Peoples, they also are related to higher achievement outcomes. It can already be concluded that although enormous progress has been made with regard to the 2015 goals and targets, they will not be met for disadvantaged indigenous peoples, unless governments direct more attention — and resources — towards them.

58. Given their unique cultures and ways of life, it must also be noted that social and economic development for indigenous peoples may be different from other sectors of the population. Hence, development strategies must take into account,

[16] See more on the Organization for Economic Cooperation and Development (OECD)-Development Cooperation Directorate (DAC) list of eligible countries at: http://www.oecd.org/development/stats/daclistofodarecipients.htm.

[17] See Danish Ministry of Foreign Affairs (Danida), available at: http://amg.um.dk/en/~/media/amg/Documents/Policies%20and%20Strategies/Freedom%20Democracy%20and%20Human%20Rights/Indigenous%20people/StrategyForDanishSupportToIndigenousPeople.ashx.

inter alia, indigenous peoples' languages, traditions, livelihood strategies and autonomous institutions. This is fundamental to the success of these measures. One way to ensure the accommodation of indigenous peoples' cultures is by including them in the design, programming and implementation of development efforts. In this connection, throughout the Declaration on the Rights of Indigenous Peoples reference is made to the need for indigenous peoples to develop their own priorities for development and to be consulted and included in the process of crafting State programmes, as noted further below.

59. One aspect of culturally appropriate social services involves providing such services to indigenous peoples in the places where they live. Many indigenous peoples live in rural and isolated areas, where there is often limited availability of medicines and teaching materials, low professional attainment on the part of the teachers and health workers locally deployed and poor school and clinic infrastructure. Country reports by the previous Special Rapporteurs are replete with examples of these conditions. In parallel, an ever-increasing number of indigenous peoples live in urban areas where culturally appropriate services, such as mother tongue education, are often not available. Measures must be put in place to ensure that indigenous peoples can enjoy the same social and economic rights as other segments of the population, without having to sacrifice important aspects of their cultures or ways of life, including their attachment to their traditional lands and the transmission of their languages to future generations.

60. In the context of education, the Declaration on the Rights of Indigenous Peoples underlines the importance for indigenous peoples of: education in their own languages; culturally appropriate methods of teaching and learning; and the reflection of their cultures, traditions, histories and aspirations in educational curricula (see articles 14(1) and 15(1)). However, in many places, prejudices and negative stereotyping of indigenous culture and identity remain a major challenge, and indigenous peoples face discrimination in schools, both from other students and from teachers. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has carried out an exhaustive investigation into this issue, the results of which are contained in its 2010 *Education for All Global Monitoring Report: Reaching the marginalized*. The report affirms that "[s]tigmatization is a potent source of marginalization that children bring with them to the classroom. From Aboriginals in Australia to the indigenous people of Latin America, failure to provide home language instruction has often been part of a wider process of cultural subordination and social discrimination".[18]

61. In general, disadvantages do not exist in isolation and there are numerous examples that demonstrate how poverty and gender discrimination contribute to exacerbating educational deprivation among indigenous peoples throughout the world. The UNESCO report identifies the following measures to overcome marginalization in education, all of which are valid options for addressing the problems encountered by indigenous peoples: setting national equity-based targets, which focus on marginalized sections of the population; gathering disaggregated data to identify marginalized groups and monitor their progress; identifying the drivers of marginalization for specific groups; adopting an integrated policy approach that addresses interlocking causes of disadvantage, within education and

[18] UNESCO and Oxford University Press, 2010 *Education for All Global Monitoring Report: Reaching the marginalized*, p. 11.

beyond, including by improving affordability and accessibility, strengthening the learning environment; and honouring and expanding entitlements and opportunities.[19]

62. In the area of health, persisting inequities in health status is an unfortunate commonality for all of the world's indigenous peoples, with gaps not only in health status, but also in many determinants of health. Women and children face additional vulnerabilities. These are rooted in situations of extreme poverty, lack of access to education and social services, destruction of indigenous economies and sociopolitical structures, forced displacement, armed conflict and loss and degradation of customary lands and resources, all of which are further compounded by structural racism and discrimination.

63. The Declaration on the Rights of Indigenous Peoples emphasizes that indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals (article 24(1)). The importance of such practices is reaffirmed by the Pan American Health Organization (PAHO) and the World Health Organization (WHO), which estimate that 80 per cent of the population in developing countries relies on traditional healing systems as their primary source of care.[20] This number undoubtedly includes many indigenous people, who often rely on a combination of traditional and western medicines and practices, and points to the need for developing inclusive health strategies in partnership with indigenous peoples.

64. Within the United Nations system, PAHO, which is the specialized health agency of the inter-American system and the Regional Office of WHO for the Americas, has been the champion in promoting complementarity between traditional and western health systems and establishing alliances with traditional healers in order to incorporate their perspectives, medicines and therapies into national health systems. PAHO has stressed the need to develop comprehensive health strategies that reposition health and health services, taking into account structural social determinants, and that promote the collective human rights of indigenous peoples, eliminate discrimination and redistribute political and economic power towards a more diverse and equitable world.[21]

65. The Special Rapporteur agrees with these calls for broad, multifaceted and contextualized legal, policy and programme responses to overcoming discrimination against indigenous peoples and to furthering their self-determination with regard to health and education. This requires coordinated and systematic actions by States, actions which acknowledge and conceptualize the indivisibility and interdependence of human rights and also correspond to indigenous peoples' holistic and integrated perceptions of development and well-being.

[19] Ibid., p. 272-273.

[20] PAHO/WHO, resolution 47/13, Health of the Indigenous Peoples of the Americas, available at: http://www2.PAHO/WHO.org/hq/dmdocuments/2009/CD47-13-e.pdf.

[21] See ECLAC, PAHO/WHO and the United Nations Population Fund (UNFPA), *Mortalidad infantil y en la niñez de pueblos indígenas y afrodescendientes de América Latina: inequidades estructurales, patrones diversos y evidencia de derechos no cumplidos*, United Nations (2010).

Improving indigenous peoples' conditions of work

66. Labour rights constitute a crucial yet often overlooked element of indigenous peoples' economic rights, which is ironic given that initially it was the exploitation of indigenous workers that raised international concerns about the situation of indigenous peoples and led to the adoption of the first international instrument on their rights, ILO Convention No. 107 of 1957. All available data indicates that the exploitation of and discrimination against indigenous workers persist today.[22] Large numbers of indigenous peoples remain excluded from vocational training, employment opportunities and social protection. Many are trapped in the informal economy, often in precarious and low-paid jobs.

67. Pervasive discrimination against indigenous peoples in many places results in the failure to respect the value of skills related to traditional knowledge and indigenous identity, for example the ability to speak an indigenous language. In addition to the general discrimination against indigenous peoples in employment and occupations, they are particularly vulnerable to the most extreme forms of labour exploitation, such as hazardous labour conditions, child labour and forced labour. The latter includes: the bonded labour of indigenous peoples in several countries in South Asia, slavery-like practices in parts of Africa; and debt-bondage in parts of Latin America. Indigenous women and children face additional risks related to trafficking and sexual exploitation, as well as exploitation in the context of domestic work.

68. Some progress has been made with regard to documenting the gross violations of indigenous peoples' rights in the context of labour exploitation, including through forced and child labour,[23] and the ILO supervisory bodies have increasingly been addressing the labour conditions of indigenous workers under the relevant conventions.[24] However, this is an area where the Special Rapporteur sees the need for additional special measures to protect the most vulnerable individuals and groups. Such efforts could include the collaborative development of comprehensive action plans between Governments, indigenous organizations, workers' and employers' organizations and others; information dissemination and awareness raising in indigenous languages; economic empowerment of particularly vulnerable groups; and support to victims.

69. The Special Rapporteur draws attention to the precarious situation of the numerous indigenous women, particularly from Latin America and Asia, who serve as domestic workers, either in their home countries or as migrant workers.

[22] See Inter-Agency Support Group on Indigenous Issues, thematic paper towards the preparation of the World Conference on the Rights of Indigenous Peoples, "Indigenous peoples' access to decent work and social protection", June 2014.

[23] See Bedoya Silva-Santisteban and Bedoya Garlan, working documents: El trabajo forzoso en la extracción de la madera en la Amazonia Peruana; Enganche y servidumbre por deudas en Bolivia; Servidumbre por deudas y marginación en el chaco de Paraguay; ILO, 2005; Guidelines for combating child labour among indigenous and tribal peoples, ILO, 2006; United Nations Permanent Forum on Indigenous Issues, mission to Paraguay, report and recommendations, 2009, available at: http://www.un.org/esa/socdev/unpfii/documents/UNPFII_Mission_Report_Paraguay_EN.pdf; United Nations Permanent Forum on Indigenous Issues, mission to Bolivia, report and recommendations, 2009, available at: http://www.un.org/esa/socdev/unpfii/documents/UNPFII_Mission_Report_Bolivia%20_EN.pdf.

[24] The comments of the ILO supervisory bodies are available at the ILO's NOMRLEX database at www.ilo/normlex.

According to ILO estimates, there are a minimum of 53 million adult domestic workers in the world; 83 per cent of whom are women.[25] It is unknown what percentage indigenous women constitute, but the sparse data available indicates that in some countries and regions they may actually constitute the majority. These women often face deplorable working conditions, labour exploitation and human rights abuses, frequently without legal recourse to remedy. In this context, the Special Rapporteur notes that the Domestic Workers Convention (ILO Convention No. 189) entered into force in September 2013. The Convention aims at extending basic labour rights to domestic workers around the globe and can be a potentially important instrument for indigenous women.

70. The Special Rapporteur expresses her willingness to collaborate with ratifying countries, indigenous organizations, in particular women's organizations, ILO and others to ensure that this instrument is better known and implemented in partnership with indigenous peoples, thereby hopefully making a concrete difference in the lives of the many indigenous domestic workers.

The situation of indigenous women

71. When looking at available socioeconomic data disaggregated by ethnicity and gender, there is no doubt that indigenous women experience particular and interrelated forms of discrimination because of their indigenous identity and their gender. Gender-based discrimination is a sad reality in most countries, and it is also found within some indigenous societies where, for example, women may not traditionally have participated in governance institutions or where girls are not encouraged to study. In short, many indigenous women still face additional gender-based discrimination, which leads to disadvantages, marginalization and, in extreme cases, to violence, physical mutilation, trafficking, prostitution and restricted access to justice. On the other hand, there is ample documentation of the strong and crucial roles played by indigenous women in many areas of life, including food production, biodiversity conservation, climate change adaptation, transmission of languages, culture and knowledge, conflict resolution and peacekeeping.

72. The Special Rapporteur notes that there are still voices that tend to diminish the debate about indigenous women either by regarding their marginalization and the violation of their rights as an effect of "culture and tradition," or by portraying a false conflict or divide between the collective rights of indigenous peoples and the individual rights of indigenous women. The Special Rapporteur strongly opposes such views and underlines the complementary and mutually reinforcing character of collective and individual rights. The fulfilment of the rights of individual indigenous men and women depends on the realization of their collective rights to self-determination, including culture, language, lands and territories. Likewise, indigenous societies must be guided by universal human rights as they further strengthen and develop their governance institutions, their customs and traditions, with the full participation of indigenous women.

73. In this context, the Special Rapporteur, in agreement with the Committee on Economic, Social and Cultural Rights, emphasizes that both the Declaration on the Rights of Indigenous Peoples and the International Covenant on Economic Social

[25] *Domestic Workers Across the World: Global and regional statistics and the extent of legal protection*, ILO, 2013.

and Cultural Rights must be interpreted within the broader framework of human rights and fundamental freedoms.[26] This implies that cultural rights cannot be invoked to limit the scope of — or to infringe upon — internationally human rights. This principle is explicitly upheld in article 34 of the Declaration, which stipulates that "Indigenous peoples have the right to promote, develop and maintain their (...) juridical systems or customs, in accordance with international human rights standards".

74. The Special Rapporteur welcomes the emergence and proliferation of indigenous women's organizations and networks in all parts of the world at the local, national, regional and international levels.[27] These organizations are dynamic and have, over a relatively short period of time, given a strong and forceful voice to the concerns, priorities and aspirations of indigenous women, both with regard to their individual rights as well as to their rights as members of indigenous collectives.

75. As also noted in her first report to the Human Rights Council (A/HRC/27/52), during the term of her mandate, the Special Rapporteur will place special emphasis on the issues facing indigenous women, and will make a special effort to work closely with indigenous women to make sure that their concerns are consistently addressed in her work. In these efforts, she will strive to complement the work of other mandate holders and entities active in this field, including the Special Rapporteur on violence against women, the Working Group on Discrimination against Women in Law and Practice and the Committee on the Elimination of Discrimination against Women.

Governance

76. It is necessary for States to consult with indigenous peoples and ensure their participation before adopting legislative or administrative measures or projects that affect them. Concerns in this regard have been consistently raised in the context of the strategies and programmes designed to reach the Millennium Development Goals.

77. A first step in establishing adequate development plans and programmes, in the context of the Millennium Development Goals and beyond, is to assess needs and identify priorities and to develop strategic action plans with goals and frames for implementation, together with indigenous peoples. Planning that takes into account and incorporates steps to implement indigenous peoples' rights can also take place in the context of broader education, health, housing, poverty reduction and resource development strategies (see A/HRC/24/41, paras. 49-51) as well as in other areas. Involving indigenous peoples at the outset in planning and throughout implementation phases, which would go a long way towards facilitating the implementation of core development goals with respect to indigenous peoples, is still a step that is often overlooked.

78. A 2008 desk review of country reports on the achievement of the Millennium Development Goals, undertaken by the secretariat of the United Nations Permanent Forum on Indigenous Issues, concluded that: 80 per cent of the reports inadequately

[26] E/C.12/GC/21, para. 18.

[27] See the International Indigenous Women's Forum database of indigenous women's organizations at: http://www.fimi-iiwf.org/organizaciones.php.

addressed indigenous issues; none of the reports consistently included disaggregated data; and none of the reports were prepared in consultation with indigenous peoples.[28] At the international level, similar reviews of various common country assessments and United Nations Development Assistance Frameworks, which constitute the main framework for United Nations system development assistance at the country level, also concluded that indigenous peoples had little participation and that most frameworks did not provide for disaggregated data and benchmarks related to indigenous peoples' development.[29]

79. The implications of this omission are simple but far-reaching: if indigenous peoples' needs and concerns are not reflected in these overall frameworks established by governments and supported by the United Nations system and other bilateral and multilateral donors, they may simply be excluded from development efforts and their rights may even be further undermined.

80. On the positive side, the Special Rapporteur is aware of numerous examples of inclusive and collaborative development efforts in support of indigenous peoples. These range from large-scale programmes to demarcate indigenous lands and develop intercultural and bilingual education at the national level, to small projects directly implemented by indigenous communities in response to their own priorities. Some countries have also advanced in building regular and institutionalized mechanisms for consultation and participation, which ensure indigenous peoples' influence in the strategic planning and implementation of development strategies and programmes.

81. Within the United Nations system, there have been some important examples of building platforms for dialogue at the country-level between indigenous peoples and the entities of the system. In this context, the Special Rapporteur underlines that States as well as United Nations agencies, in accordance with articles 41 and 42 of the Declaration on the Rights of Indigenous Peoples and the broader range of human rights instruments, must respect right of indigenous peoples to participate in and be consulted about development interventions that affect them.

82. The design of the global post-2015 development agenda calls for renewed efforts to establish adequate inclusive governance mechanisms for consultation and participation at the national and international levels as a solid bulwark against imposed developments and a prerequisite for sustainable development outcomes. These basic governance requirements should be solidly reflected in the framework to achieve the sustainable development goals.

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[28] See B. Hartley, *MDG Reports and Indigenous Peoples: A Desk Review*, No. 3, secretariat of the United Nations Permanent Forum on Indigenous Peoples, 2008.

[29] M. Lopez, Integration of Indigenous Peoples' Perspectives in Country Development Processes: Review of selected CCAs and UNDAFs, secretariat of the United Nations Permanent Forum on Indigenous Issues (2007); A. K. Nongkynrih, Integration of Indigenous Peoples Perspectives in Country Development Processes: Review of selected CCAs and UNDAFs, secretariat of the United Nations Permanent Forum on Indigenous Issues (2008).

V. Conclusions and recommendations towards the establishment of the sustainable development goals

83. **Engaging in partnerships with indigenous peoples to define strategies to progressively achieve their economic, social and cultural rights is not only a duty of States under the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Rights of Indigenous Peoples, it is also an invaluable contribution to strengthening the diversity of sustainable livelihood systems and economies that include both market, non-market and other approaches for a more equitable and sustainable sharing of wealth and resources.**

84. **In concluding her first report to the General Assembly, the Special Rapporteur underlines the unique opportunity that the global community has to use the design, implementation and monitoring processes related to the sustainable development goals to address the persistent discrimination against indigenous peoples, as individuals and as collectives, and with regard to both access to and adequacy of development intervention.**

85. **Overcoming discrimination against indigenous peoples, and indigenous women in particular, will require concerted efforts and, in many cases, special measures. The Special Rapporteur expresses her hope that the global community is ready to take the necessary steps to end the historical injustices committed against indigenous peoples, and provides the following recommendations to that effect:**

(a) **The processes to define, implement and monitor the sustainable development goals should be used as a vehicle to address the aspirations of indigenous peoples for self-determined development, and to achieve equality in development outcomes. This will require the full and effective participation of indigenous peoples in the definition, implementation and monitoring of the goals at both the international and national levels, including the establishment of regular mechanisms for consultation and participation;**

(b) **The universality of the proposed sustainable development goals is a unique opportunity to highlight and address existing inequalities between the indigenous and non-indigenous sectors of the population in all countries across the globe. In order to monitor discrimination, recurrent data gathering processes, such as population and housing censuses, should disaggregate data, using self-identification as a key criterion for the identification of indigenous peoples. Additional specific indicators and related data-gathering processes should be developed to monitor essential aspects of indigenous peoples' self-determined development, such as security of tenure with regard to lands, territories and natural resources;**

(c) **States should adopt broad measures to ensure respect for indigenous peoples' labour rights, as well as special measures to address the situation of groups that are most vulnerable to forced labour, child labour, sexual exploitation and trafficking;**

(d) **The disadvantages faced by indigenous peoples with regard to education and health should be addressed by identifying the multiple drivers of marginalization, adopting integrated policy approaches that address**

interlocking causes of disadvantages, setting specific national targets for indigenous peoples' health and education outcomes and gathering disaggregated and specific data to monitor progress;

(e) Indigenous peoples should be included in the design and delivery of adequate social services, particularly within the education and health sectors, with the understanding that culturally appropriate services are not only required by international human rights standards but are also are related to higher achievement outcomes.